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FOR JUST IMMIGRATION

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY OF SAN JOSE, a municipal corporation;  
and BLACK ALLIANCE FOR JUST  
IMMIGRATION, a California Non-Profit  
Corporation,

Plaintiffs,

v.

WILBUR L. ROSS, JR., in his official capacity  
as Secretary of the U.S. Department of  
Commerce; et al.,

Defendants.

STATE OF CALIFORNIA by and through  
Attorney General Xavier Becerra; et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., in his official capacity  
as Secretary of the U.S. Department of  
Commerce; et al.,

Defendants.

Case No. 3:18-cv-02279

**STIPULATION TO ADMIT TRIAL  
TRANSCRIPT IN LIEU OF  
TESTIMONY FOR DR. JOHN ABOWD;  
[PROPOSED] ORDER**

Dept: 3  
Judge: The Honorable Richard G.  
Seeborg  
Trial Date: January 7, 2019  
Complaint Filed: April 17, 2018

Case No. 3:18-cv-01865

**JOINT STIPULATION REGARDING TRIAL TESTIMONY OF  
DR. JOHN ABOWD**

To promote efficiency and preserve judicial resources, Plaintiffs, Plaintiff-in-Intervention, (collectively, “Plaintiffs”) and Defendants (collectively, “Parties”) in the cases of *San Jose et al. v. Ross et al.*, 18-cv-2279, and *California et al. v. Ross et al.*, 18-cv-1865 have reached an agreement regarding the admission of transcripts of Dr. John Abowd’s trial testimony in *State of New York, et al. v. United States Department of Commerce, et al.*, case no. 1:18-cv-02921 (“New York matter”). The Parties hereby stipulate as follows:

1. The trial testimony of Dr. Abowd set forth in pages 876:1 - 1048:19 of the transcript of trial proceedings on November 13, 2018 in the New York matter (Dr. Abowd’s testimony during direct examination) attached hereto as **Exhibit A** shall be admitted into evidence during trial in the above-captioned cases.

2. The following exhibits admitted in the New York matter during Dr. Abowd’s direct examination shall be admitted into evidence during trial in the above-captioned cases subject to Defendants’ standing objection to the admission of evidence outside of the filed administrative record in this case:<sup>1</sup> PX-2 (PTX-002), PX-4 (PTX-004-A through PTX-004-D), PX-9 (PTX-009), PX-22 (PTX-022), PX-23 (PTX-023), PX-24 (PTX-024), PX-25 (PTX-025), PX-26 (PTX-026), PX-109 (PTX-110), PX-140 (PTX-141), PX-152 (PTX-153), PX-162 (PTX-160), PX-163 (PTX-161), PX-268 (PTX-212), PX-271 (PTX-214), PX-359 (PTX-266), PX-448 (PTX-326), and PX 662 (PTX-465). In addition, the following exhibit identified as a demonstrative in the New York matter during Dr. Abowd’s direct examination shall be identified for the same purpose during trial in the above-captioned cases subject to Defendants’ standing objection to the admission of evidence outside of the filed administrative record in this case: PX 513 (PTX 359).

3. Plaintiffs City of San Jose and Black Alliance for Just Immigration do not seek to admit or rely on those portions of Dr. Abowd’s testimony or exhibits which relate to the decision-making process at the U.S. Department of Commerce that led to the addition of the citizenship

<sup>1</sup> The New York trial exhibit number is followed by the trial exhibit number in this matter in parentheses.

1 question to the 2020 Census. They do, however, seek to admit and rely on those portions of Dr.  
2 Abowd's testimony which relate to Plaintiffs' standing and Enumeration Clause claims.

3 4. Plaintiffs in both cases reserve their right to introduce new exhibits and to cover  
4 additional topics in direct not covered in the New York matter. Such exhibits and questions in  
5 direct may be presented after the initial examination of Dr. Abowd by the Defendants.

6 **IT IS SO STIPULATED.**

7 **[SIGNATURES ON THE FOLLOWING PAGE]**  
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1 Dated: January 13, 2019

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**FILER'S ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, I hereby attest that concurrence in the filing of this document has been obtained from all signatories above.

Dated: January 13, 2019

/s/ Anna T. Ferrari  
ANNA T. FERRARI

**[PROPOSED] ORDER**

Based on the parties' Stipulation to Admit Trial Transcript in Lieu of Testimony for Dr. John Abowd, and good cause appearing, the trial testimony of Dr. Abowd set forth in pages 876:1 - 1048:19 of the transcript of trial proceedings on November 13, 2018 in *State of New York, et al. v. United States Department of Commerce, et al.*, case no. 1:18-cv-02921 (the "New York matter"), shall be admitted into evidence during trial in the above-captioned cases.

The following exhibits admitted in the New York matter during Dr. Abowd's direct examination shall be admitted into evidence during trial in the above-captioned cases (subject to Defendants' standing objection to the admission of evidence outside of the filed administrative record):<sup>1</sup> PX-2 (PTX-002), PX-4 (PTX-004-A through PTX-004-D), PX-9 (PTX-009), PX-22 (PTX-022), PX-23 (PTX-023), PX-24 (PTX-024), PX-25 (PTX-025), PX-26 (PTX-026), PX-109 (PTX-110), PX-140 (PTX-141), PX-152 (PTX-153), PX-162 (PTX-160), PX-163 (PTX-161), PX-268 (PTX-212), PX-271 (PTX-214), PX-359 (PTX-266), PX-448 (PTX-326), and PX 662 (PTX-465). In addition, the following exhibit identified as a demonstrative in the New York matter during Dr. Abowd's direct examination shall be identified for the same purpose during trial in the above-captioned cases subject to Defendants' standing objection to the admission of evidence outside of the filed administrative record in this case: PX 513 (PTX 359).

The Court acknowledges that Plaintiffs City of San Jose and Black Alliance for Just Immigration seek only to admit and rely on those portions of Dr. Abowd's testimony or exhibits which relate to Plaintiffs' standing and Enumeration Clause claims – and not those portions which relate to the decision-making process at the U.S. Department of Commerce that led to the addition of a citizenship question to the 2020 Census questionnaire.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
HON. RICHARD SEEBORG  
United States District Court Judge

<sup>1</sup> The New York trial exhibit number is followed by the trial exhibit number in this matter in parentheses.

# EXHIBIT A



IBD7COM1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 STATES OF NEW YORK, COLORADO,  
5 CONNECTICUT, DELAWARE, ILLINOIS,  
6 IOWA, MARYLAND, MINNESOTA,  
7 NEW JERSEY, NEW MEXICO,  
8 NORTH CAROLINA, OREGON,  
9 RHODE ISLAND, VERMONT,  
10 and WASHINGTON, *et al.*,

11 Plaintiffs,

12 v.

18 Civ. 2921 (JMF)

13 UNITED STATES DEPARTMENT OF  
14 COMMERCE, *et al.*,

Trial

15 Defendants.

16 -----x  
17 NEW YORK IMMIGRATION  
18 COALITION, *et al.*,

19 Consolidated Plaintiffs,

20 v.

18 Civ. 5025 (JMF)

21 UNITED STATES DEPARTMENT OF  
22 COMMERCE, *et al.*,

23 Defendants.

24 New York, N.Y.  
25 November 13, 2018  
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

IBD7COM1

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IbdWnys3

Abowd - Direct

1 (In open court)

2 JOHN MARON ABOWD,

3 called as a witness by the plaintiffs,

4 having been duly sworn, testified as follows:

5 THE COURT: You may proceed, Mr. Ho.

6 DIRECT EXAMINATION

7 BY MR. HO:

8 Q. Dr. Abowd, you're the chief scientist at the United States  
9 Census Bureau, correct?

10 A. Yes, sir.

11 Q. You're also associate director for research and methodology  
12 at the United States Census Bureau, correct?

13 A. That's correct.

14 Q. And in that role, you lead a directorate of research  
15 centers across all statistical programs of the Census Bureau,  
16 correct?

17 A. That's correct.

18 Q. You're one of the senior executives at the Census Bureau,  
19 correct?

20 A. That's correct.

21 Q. And you testified on behalf of the Census Bureau at a  
22 30(b)(6) deposition, correct?

23 A. Yes, sir.

24 Q. You assumed your current role at the Census Bureau on June  
25 1, 2016, correct?

IbdWnys3

Abowd - Direct

1 A. Yes.

2 Q. You had previously been a part-time employee at the Census  
3 Bureau dating back to 1998, correct?

4 A. Yes.

5 MR. HO: I'd like to bring up Plaintiffs' Exhibit 26.

6 For the record, your Honor, this has been admitted in  
7 evidence, and it is part of the administrative record.

8 Q. Dr. Abowd you recognize this as Secretary Ross's decision  
9 memo, dated March 26, 2018, directing the inclusion of a  
10 citizenship question on the 2020 census questionnaire, correct?

11 A. Yes.

12 MR. HO: I'd like to highlight on the first page the  
13 second paragraph.

14 Q. Dr. Abowd, when this memo was issued, it was your  
15 understanding that Secretary Ross set out to take a hard look  
16 following receipt of a December 2017 request from the  
17 Department of Justice for census block-level citizen voting-age  
18 population data for purposes of enforcing the Voting Rights  
19 Act, correct?

20 A. Yes.

21 MR. HO: Let's turn to page 8 of this letter, please,  
22 and let's look at the first paragraph.

23 Q. Dr. Abowd, you understand that Secretary Ross wrote that a  
24 citizenship question on the decennial census is necessary to  
25 provide complete and accurate data in response to the DOJ

IbdWnys3

Abowd - Direct

1 request, correct?

2 A. Correct.

3 Q. And with that conclusion, Secretary Ross ordered the  
4 inclusion of a citizenship question on the 2020 census,  
5 correct?

6 A. That's correct.

7 Q. And Secretary Ross ordered the bureau to combine data  
8 collected through a citizenship question on the 2020 census  
9 with the use of administrative records for developing  
10 block-level CVAP, or citizenship voting-age population, for the  
11 Department of Justice, correct?

12 A. He instructed us to use both the citizenship responses on  
13 the 2020 census and administrative data and to produce a  
14 citizen voting-age population by race and ethnicity table as we  
15 deemed best.

16 Q. And Secretary Ross refers to that as option D in his memo,  
17 is that correct?

18 A. That's correct.

19 Q. Dr. Abowd, as the chief scientist at the Census Bureau, you  
20 do not think that adding a citizenship question to the 2020  
21 census is a good idea, correct?

22 A. Correct.

23 Q. And Dr. Abowd, the leadership of the Census Bureau does not  
24 think that adding a citizenship question to the 2020 census is  
25 a good idea, correct?

IbdWnys3

Abowd - Direct

1 A. Correct.

2 Q. And Dr. Abowd, your consistent recommendation has been not  
3 to include a citizenship question on the 2020 census, correct?

4 A. Correct.

5 Q. And Dr. Abowd, the consistent recommendation from the  
6 leadership of the Census Bureau has been not to include a  
7 citizenship question on the 2020 census, correct?

8 A. Correct.

9 Q. Let's back up for a moment, Dr. Abowd. I want to talk  
10 about how you arrived at those recommendations. Now, you first  
11 learned about the Department of Justice's December 12, 2017,  
12 request to add a citizenship question to the 2020 decennial  
13 census from Acting Census Bureau Director Ron Jarmin, correct?

14 A. That's correct.

15 Q. And you learned about that via email on December 15, 2017,  
16 correct?

17 A. That's correct.

18 Q. And your understanding is that the reason for the request  
19 was that the Department of Justice wants block-level citizen  
20 voting-age population data, which I'll sometimes call CVAP, for  
21 purposes of enforcing the Voting Rights Act of 1965, correct?

22 A. That's correct.

23 Q. Now, Acting Director Jarmin asked you to assemble a team of  
24 experts to begin discussing how the Census Bureau might respond  
25 to the DOJ request, correct?

IbdWnys3

Abowd - Direct

1 A. He asked me to assemble a team of technical experts, that's  
2 correct.

3 Q. And you refer to that team of technical experts as your  
4 SWAT team, right?

5 A. That's correct.

6 Q. And over the course of discussions with Dr. Jarmin, it  
7 became clear to you that he wanted a technical report as to how  
8 the Census Bureau could respond to the DOJ request, correct?

9 A. That's correct.

10 Q. And so you asked the SWAT team to write a white paper to  
11 summarize what they could learn about citizenship data that  
12 might be used to satisfy the DOJ request, correct?

13 A. That's correct.

14 Q. And you eventually wrote a memo addressed to Secretary Ross  
15 summarizing the work of the SWAT team, correct?

16 A. Summarizing the opinions of the senior executive staff that  
17 were based on that work and other research done by other  
18 persons in the Census Bureau.

19 MR. HO: Let's look at Plaintiffs' Exhibit 26, the  
20 Ross decision memo again. Let's look at page 4, the first  
21 paragraph on the page, the last sentence.

22 Q. Secretary Ross writes: "So while there is widespread  
23 belief among many parties that adding a citizenship question  
24 could reduce response rates, the Census Bureau's analysis did  
25 not provide definitive, empirical support for that belief." Do

IbdWnys3

Abowd - Direct

1 you see that, Dr. Abowd?

2 A. Yes, I do.

3 MR. HO: We can take that down.

4 Q. Dr. Abowd, the memo that you wrote to Secretary Ross, in  
5 your opinion, that memo memorialized the Census Bureau's  
6 credible, quantitative evidence that the addition of a  
7 citizenship question to the 2020 census could be expected to  
8 lower the self-response rate in households that may contain  
9 noncitizens, correct?

10 A. Yes, that's correct.

11 Q. And you would describe noncitizens as an identifiable and  
12 large subpopulation, correct?

13 A. We identified households that either contained a noncitizen  
14 or might contain a noncitizen or a person of unknown  
15 citizenship status as a large subpopulation, yes.

16 Q. And that opinion is based upon the work of the SWAT team  
17 that was conducted under your direction, correct?

18 A. That's correct.

19 Q. And Dr. Abowd, you agree that the balance of evidence  
20 available suggests that adding a citizenship question to the  
21 2020 census would lead to a lower self-response rate in  
22 households that potentially contain a noncitizen, correct?

23 A. Yes, I agree with that conclusion.

24 Q. And the Census Bureau agrees with that conclusion, right,  
25 Dr. Abowd?



IbdWnys3

Abowd - Direct

1 A. Yes, they do.

2 Q. And reducing the self-response rate in that way, that's a  
3 bad thing, right, Dr. Abowd?

4 A. I have consistently characterized data produced by lower  
5 self-response rates as being less accurate.

6 Q. OK. I want to talk about your memo, Plaintiffs' Exhibit  
7 22.

8 MR. HO: For the record, this has been admitted into  
9 evidence and is in the administrative record.

10 Q. Dr. Abowd, this is a memo that was prepared under your  
11 supervision, correct?

12 A. I'd like to clarify that the memo that I'm familiar with  
13 contains a watermark with a version number on it, and this  
14 doesn't.

15 Q. I think it may just be a function of it being on the  
16 screen. Do you see at the bottom of the page, Dr. Abowd, on  
17 the right-hand side, it has a Bates number, 1277?

18 A. Yes, I see that.

19 Q. Is your understanding that that number reflects the fact  
20 that this memo was part of the administrative record in this  
21 case?

22 A. Yes, Bates 1277 is definitely my memo.

23 Q. OK. Great.

24 So this is a memo that was prepared under your supervision,  
25 correct?

IbdWnys3

Abowd - Direct

1 A. Yes.

2 Q. And the views are expressed in this memo are the views of  
3 the technical team, the SWAT team that assisted you, correct?

4 A. The views in this memo are a summary of the technical work  
5 that that SWAT team did and the contributions made by other  
6 senior executives at the Census Bureau.

7 Q. You agree with the conclusions in this memo, right,  
8 Dr. Abowd?

9 A. Yes, I do.

10 Q. And Acting Census Bureau Director Ron Jarmin reviewed and  
11 approved this memo, correct?

12 A. Yes, he did.

13 Q. And this is the last version of this memo, correct?

14 A. Yes, it is.

15 Q. This memo was routed to the secretary of commerce, correct?

16 A. Yes, that's correct.

17 Q. And you eventually had a meeting to discuss this memo with  
18 Secretary Ross on February 12, 2018, correct?

19 A. Yes, that's correct.

20 Q. Now, before your meeting with Secretary Ross that day, you  
21 had a premeeting on the same day with Undersecretary Karen Dunn  
22 Kelley in the Department of Commerce, correct?

23 A. Yes, that's correct.

24 Q. And during that premeeting with the undersecretary, you  
25 discussed this memo, correct?

IbdWnys3

Abowd - Direct

1 A. We all discussed it, yes.

2 Q. And when you met with Undersecretary Kelley, she did not  
3 express any disagreements with the analysis in this memo,  
4 correct?

5 A. That's my recollection from the meeting, yes.

6 Q. And during the meeting that you had with Secretary Ross  
7 later that day, he asked you questions that indicated to you  
8 that he had a thorough understanding of the issues in this  
9 memo, correct?

10 A. Yes, that's correct.

11 Q. And that was the only meeting that you had with Secretary  
12 Ross to discuss the citizenship question before Secretary Ross  
13 issued his March 26 decision memo, correct?

14 A. Yes, that's correct.

15 Q. So let's be clear. Secretary Ross had only one meeting  
16 with the chief scientist at the Census Bureau about the  
17 citizenship question before he issued his decision memo,  
18 correct?

19 A. Yes, that's correct.

20 Q. Now, your memo here, it addresses -- I'm sorry.

21 MR. HO: Let's bring up your memo, Plaintiffs' Exhibit  
22 22.

23 Q. It addresses three alternatives in response to the  
24 Department of Justice request, correct?

25 A. Yes, that's correct.

IbdWnys3

Abowd - Direct

1 Q. And those alternatives are, A, make no change in data  
2 collection; B, add a citizenship question to the 2020 census;  
3 and, C, obtain citizenship status from administrative records,  
4 correct?

5 A. You didn't finish the sentence, but yes, that's correct.

6 Q. You don't disagree with how I characterized it, do you,  
7 Dr. Abowd?

8 A. I do not.

9 MR. HO: Let's look at the last paragraph on the page  
10 and highlight it.

11 Q. Dr. Abowd, you did not recommend alternative B, which was  
12 adding a citizenship question, correct?

13 A. The memo does not recommend it, and I supervised the  
14 preparation of the memo, that's correct.

15 Q. So you did not recommend alternative B, correct?

16 A. That's correct.

17 Q. In fact, you described alternative B in the memo as "very  
18 costly, harms the quality of the census count and would use  
19 substantially less accurate citizenship status data that are  
20 available from administrative sources," correct?

21 A. Yes, that's correct.

22 Q. That's adding a citizenship question, correct?

23 A. Alternate B is the addition of the citizenship question to  
24 the 2020 census, yes.

25 Q. OK. So instead of alternative B, you recommended either

IbdWnys3

Abowd - Direct

1 alternative A, no change, or alternative C, using  
2 administrative records, correct?

3 A. Yes, that's correct.

4 Q. And your memo's conclusion was that using administrative  
5 records instead of asking the citizenship question -- that is,  
6 alternative C -- would best meet DOJ's stated uses, correct?

7 A. Yes, that's correct.

8 Q. And your memo concluded that that using administrative  
9 records instead of asking a citizenship question "is  
10 comparatively far less costly than alternative B, does not  
11 increase response burden and does not harm the quality of the  
12 census count," correct?

13 A. That's correct.

14 MR. HO: Let's talk about the analysis of alternative  
15 B in your memo, and I want to look at page 4 of PX-22. I'm  
16 looking at the header under -- I'm looking at the header in  
17 Section B2, self-response rate analysis, and I want to ask you  
18 about the first paragraph here.

19 Q. This paragraph is describing an analysis of unit  
20 nonresponse rates to the 2000 census questionnaire as compared  
21 to the 2000 long form, right, Dr. Abowd?

22 A. Yes, that's correct.

23 Q. And by unit nonresponse, we mean the rate at which people  
24 fail to respond to a survey, correct?

25 A. Fail to self-respond, correct.

IbdWnys3

Abowd - Direct

1 Q. The 2000 short-form census questionnaire did not have a  
2 citizenship question on it, correct?

3 A. Yes, that's correct.

4 Q. But the 2000 census long form did have a citizenship  
5 question on it, correct?

6 A. Yes, that's correct.

7 Q. And so what you did here is you compared unit self-response  
8 rates on these two questionnaires between noncitizens, on the  
9 one hand, and citizen households, on the other, correct?

10 A. That's not all we did, but you got the first step right,  
11 yes. Correct.

12 Q. OK. Let's just talk about the long-form analysis. We'll  
13 talk about the ACS analysis in a second.

14 A. Well, I meant that you hadn't completely characterized how  
15 we did the short and long-form analysis in 2000.

16 Q. You compared the decline in self-response on the census  
17 long form as compared to the census short form for households  
18 that contain a noncitizen to that same decline for households  
19 that were all citizens, correct?

20 A. Yes, that's correct.

21 Q. OK. And when you conducted this analysis, you found that  
22 for both citizen households and households that had one  
23 noncitizen, the response rate on the long form was lower than  
24 on the short form?

25 A. The self-response rates on the long form were lower than

IbdWnys3

Abowd - Direct

1 those on the short form, that's correct.

2 Q. But for households that had one or more noncitizen in them,  
3 the decline in the self-response rate between the long form and  
4 the short form was 3.3 percentage points more than it was for  
5 all citizen households, correct?

6 A. Yes, that's correct.

7 Q. And you considered that decline to be evidence that a  
8 citizenship question causes households containing a noncitizen  
9 to self-respond to a survey at lower rates, correct?

10 A. We considered that credible, quantitative evidence that  
11 such a question might cause a decline on the magnitude of 3.3  
12 percent in 2000.

13 Q. OK. Now, you also conducted similar analyses for the  
14 American Community Survey, correct?

15 A. That's correct.

16 Q. And that analysis in your memo -- and that analysis is  
17 reflected in your memo here, correct?

18 A. As it existed as of January 19, that's correct.

19 Q. OK. We'll get to the later analysis. Let's just stick to  
20 the January 19 for now. Is that all right?

21 A. Yes, sir.

22 Q. OK. Now, just to pause for a moment here, Dr. Abowd, I  
23 want to just make sure the record's clear here. Your analysis  
24 of unit nonresponse rates here applies not just to alternative  
25 B but also to option D, the choice that the secretary of

IbdWnys3

Abowd - Direct

1 commerce ultimately made, correct?

2 A. It would apply to any alternative in which the citizenship  
3 question was asked on the short form.

4 Q. And that includes option D, what Secretary Ross ultimately  
5 ordered, correct?

6 A. Yes, that's correct.

7 Q. Now, before we talk about your analysis of ACS data, I just  
8 want to back up and ask a few questions about the ACS.

9 The ACS is an ongoing sample survey, correct?

10 A. Yes, that's correct.

11 Q. Sent to a little more than 2 percent of the population  
12 annually, correct?

13 A. It's sent to a larger percentage than that, but the  
14 responses come from between two and two and a half percent of  
15 the population annually.

16 Q. Responses to the ACS are required by law, correct?

17 A. That's correct, but the nonresponse follow-up is a sample,  
18 not universally selected households.

19 Q. We'll talk about the nonresponse follow-up to the ACS in a  
20 second. I just want to make clear that just like responses to  
21 the decennial enumeration questionnaire are required by law,  
22 responses to the ACS are also required by law, correct?

23 A. Yes, that's correct.

24 Q. Now, the ACS contains dozens of questions, correct?

25 A. Yes, at least dozens.



IbdWnys3

Abowd - Direct

1 Q. And one of the questions on the ACS is a question about  
2 citizenship status?

3 A. Yes, that's correct.

4 Q. Now, your memo here has three different kinds of analyses  
5 of American Community Survey, or ACS, data that bear upon the  
6 potential adverse impact of a citizenship question on the 2020  
7 census, correct?

8 A. I think you're referring to the Section B1, 2 and 3 in the  
9 memo?

10 Q. I'm referring to your analysis of unit nonresponse rates,  
11 item nonresponse rates and breakoff rates.

12 A. Yes, that's correct.

13 Q. OK. All three of those analyses bear upon the potential  
14 effect of a citizenship question on the 2020 census, correct?

15 A. Yes, that's correct.

16 Q. And it's the opinion of the executive staff of the Census  
17 Bureau that all three analyses were appropriate in support of  
18 your conclusion that using administrative records would be a  
19 better option for producing block-level CVAP data for VRA  
20 enforcement purposes than adding a citizenship question to the  
21 census, correct?

22 A. Yes, that's correct.

23 Q. And this memo included that all three analyses support the  
24 conclusion of an adverse impact on self-response and as a  
25 result on the accuracy and quality of the 2020 census, correct?

IbdWnys3

Abowd - Direct

1 A. I don't remember it using adverse impact, but they support  
2 the conclusion that there would be a lower self-response rate  
3 and the consequences of that lower self-response rate, yes.

4 MR. HO: OK. Let's just look at the bottom of -- I'm  
5 sorry. At page 4 in your memo, the first two sentences there  
6 at the top. I'm sorry. Not the bottom but just the top,  
7 "before these reasons" sentence, the top paragraph on the page.

8 Q. You used the term "adverse impact" to describe the effect  
9 of the citizenship question on self-response rates, right,  
10 Dr. Abowd?

11 A. Thank you for refreshing my memory. Yes, I did.

12 MR. HO: OK. Let's talk about your analysis of unit  
13 self-response rates, and let's stay on page 4 and let's look at  
14 the bottom paragraph, starting with "we compared."

15 Q. Now, Dr. Abowd, in this paragraph, you're describing an  
16 analysis comparing response rates on the 2010 census to the  
17 2010 American Community Survey, correct?

18 A. That's correct.

19 Q. And the 2010 census, let's just be clear, that  
20 questionnaire did not have a citizenship question on it, right?

21 A. That's correct.

22 Q. But the 2010 ACS did have a citizenship question, right?

23 A. Yes, that's correct.

24 Q. And when you conducted this analysis, you found that  
25 self-response rates to the 2010 ACS declined more for

IbdWnys3

Abowd - Direct

1 households that had one or more noncitizens in comparison to  
2 the 2010 census, on the one hand, as in comparison to  
3 households that consisted solely of citizens, correct?

4 A. Yes, you've got the contrast correct.

5 Q. OK. And the magnitude of that difference was 5.1  
6 percentage points, correct?

7 A. Yes, that's correct.

8 MR. HO: Let's bring up page 5 of your memo, and I  
9 want to ask about the first paragraph, last sentence.

10 Q. You wrote that, "It is therefore a reasonable inference  
11 that a question on citizenship would lead to some decline in  
12 overall self-response because it would make the 2020 census  
13 modestly more burdensome in the direct sense and potentially  
14 much more burdensome in the indirect sense that it would lead  
15 to a larger decline in self-response for noncitizen  
16 households." Did I read that right?

17 A. Yes, you did.

18 Q. And when you say noncitizen households, you mean a  
19 household, for purposes of this analysis, that has one or more  
20 noncitizens in it, correct?

21 A. Yes, that's correct.

22 Q. Now, it's fair to say that this 5.1 percentage point  
23 estimate at the time, that you considered that a conservative  
24 estimate of the differential impact of a citizenship question  
25 on the self-response rates of noncitizens as compared to

IbdWnys3

Abowd - Direct

1 citizens if you were to place such a question on the 2020  
2 census, correct?

3 A. Yes, I believe I have characterized that estimate as  
4 conservative, but we haven't discussed exactly what a  
5 statistician might mean by conservative. What I mean in this  
6 context is that it is performed in the context of a natural  
7 experiment, although you haven't used those words yet.

8 THE WITNESS: Your Honor, "natural experiment" is the  
9 technical name for the way this analysis was conducted. Happy  
10 to elaborate if you have questions.

11 BY MR. HO:

12 Q. I'll have plenty of questions unpacking what you mean by  
13 conservative, and we're going to spend some talking about what  
14 a natural experiment means too, Dr. Abowd. Don't worry. But  
15 let's just stick with my questions for now, and my question is  
16 at the time that you wrote this memo, 5.1 percentage points was  
17 your best conservative estimate of the effect of adding a  
18 citizenship question in terms of the differential impact of  
19 self-responses of noncitizen households as compared to citizen  
20 households if you were to put that question on the 2020 census.  
21 Correct?

22 A. Yes, that's correct.

23 MR. HO: Let's turn to page 6 of your memo. I want to  
24 ask you about the middle paragraph, the last sentence. I'm  
25 sorry. Not the last sentence, just the middle paragraph here.

IbdWnys3

Abowd - Direct

1 Q. Now, in this memo, for purposes of calculating some of your  
2 estimates, you expect there are about 126 million occupied  
3 households to be enumerated in the 2020 census, is that right?

4 A. Yes, that's correct.

5 Q. And you estimate that 9.8 percent of households contained  
6 at least one noncitizen, correct?

7 A. Yes, that's correct.

8 Q. And so a reduction of 5.1 percentage points in the  
9 self-response of those households would translate to about  
10 630,000 households, correct?

11 A. 630,000 households in NRFU that would not otherwise have  
12 been there, yes.

13 Q. OK. And that likely translates into millions of people,  
14 right, Dr. Abowd?

15 A. At average household sizes, it's more than a million  
16 people, yes.

17 Q. Now, today, the Census Bureau's best conservative estimate  
18 of the differential effect of adding a citizenship question to  
19 the census in terms of self-responses of all citizen households  
20 to other households is not 5.1 percentage points, right,  
21 Dr. Abowd?

22 A. Yes, that's correct.

23 Q. Today, the best conservative estimate of the Census Bureau  
24 for that differential effect in self-response is 5.8 percentage  
25 points, correct?

IbdWnys3

Abowd - Direct

1 A. Best estimate we have at the moment is 5.8 percentage  
2 points.

3 MR. HO: OK. Let's bring up Plaintiffs' Exhibit 162,  
4 which is also Defendants' Exhibit 2. For the record, it's been  
5 admitted.

6 Q. Dr. Abowd, we talked about a white paper earlier and how  
7 you were charged with putting a white paper together. Do you  
8 remember that?

9 A. Yes, I do.

10 Q. Is this the white paper?

11 A. This is the most recent version of the technical report  
12 performed under my supervision, yes.

13 Q. And you've been sitting through trial for the last week or  
14 so; sometimes people have referred to this as the Brown memo  
15 during their testimony, right?

16 A. Yes, I believe that's right.

17 Q. OK, so white paper, Brown memo, different colors, different  
18 names, but the same document, right?

19 A. Yes, in deference to the authors, I usually call it Brown  
20 *et al.*

21 Q. OK. The analysis in Brown *et al.*, or the white paper, that  
22 was begun in response to the Department of Justice's request  
23 for block-level CVAP data, correct?

24 A. Yes, that's correct.

25 Q. And the authors of this paper, they're a subset of the SWAT

IbdWnys3

Abowd - Direct

1 team that you assembled, right?

2 A. Yes, that's correct.

3 Q. And you chose the best people at the Census Bureau for  
4 conducting the analysis that's reflected in the Brown memo,  
5 correct?

6 A. Yes, I did.

7 Q. And this white paper, this version here, dated August 6,  
8 2016, you've described this as an extended and more up-to-date  
9 version of the analysis that you relied on when you prepared  
10 your January memo to Secretary Ross, Plaintiffs' Exhibit 22,  
11 right?

12 A. Yes, I did.

13 Q. Now, this is the most recent version of the white paper  
14 available, correct?

15 A. Yes, it is.

16 MR. HO: Just as a brief aside, I want to bring up  
17 Plaintiffs' Exhibit 4, and I want to look at page AR-11634,  
18 which should be about page 8,000-something in here. Sorry.

19 Q. While he's bringing this on the screen, I just want to ask  
20 you, Dr. Abowd, your understanding is that there's an earlier  
21 draft of the Brown *et al.* paper, the white memo that is  
22 contained in the administrative record in this case, right?

23 A. It's my understanding that an earlier draft was produced in  
24 discovery, yes.

25 Q. And is part of the administrative record in this case,

IbdWnys3

Abowd - Direct

1 correct?

2 A. I believe there's some discussion on the record of finding  
3 the Bates number for it, but that is my understanding, yes.

4 Q. OK. We'll come back to this and identify it at a later  
5 time, but I just want to ask you, Dr. Abowd, you believe that  
6 the analysis reflected in the Brown *et al.* memo was  
7 methodologically appropriate, right?

8 A. Yes, I do.

9 Q. And you believe that the Brown memo constitutes the best  
10 analysis that the Census Bureau can do of the consequences of  
11 adding the citizenship question to the 2020 census, right?

12 A. With the available data, correct.

13 Q. And there are no conclusions in the Brown memo that the  
14 Census Bureau disagrees with, correct?

15 A. That's correct.

16 Q. OK. The analysis that produced the 5.8 percentage point  
17 estimate, the best conservative estimate of the differential  
18 effect of the citizenship question on self-responses, that's  
19 contained in the Brown memo, right?

20 A. Yes, it is.

21 MR. HO: Let's turn to page 39 of the Brown memo.

22 Q. And looking at table 9, the second panel here on table 9,  
23 on the bottom half of the table, with the minus 5.8 percentage  
24 point figure there, that's the, where the .58 percentage point  
25 estimate is found in this paper, correct?



IbdWnys3

Abowd - Direct

1 A. Yes, that's correct.

2 Q. Now, several factors account for the difference between  
3 your current best estimate of 5.8 percentage points and your  
4 older estimate of 5.1 percentage points, correct?

5 A. Yes, that's correct.

6 Q. OK. I want to talk through some of these. One difference,  
7 one factor that accounts for the difference is you compared  
8 different households at this time, right?

9 A. The comparison households are constructed differently,  
10 that's correct.

11 Q. Right, so for the 5.1 percentage point estimate, you  
12 compared households that were all citizen, as identified in the  
13 administrative records, to households that had one or more  
14 noncitizens, as identified in the administrative records,  
15 right?

16 A. That's correct.

17 Q. And for the 5.8 percent comparison, you compared households  
18 for which their ACS response was "all members of the household  
19 are citizens" and the administrative records indicate that  
20 they're all citizens, on the one hand, and all the other  
21 households, on the other hand, correct?

22 A. Yes, that's correct.

23 Q. Another difference is that the 5.8 percentage point  
24 estimate is based on more recent ACS data, correct?

25 A. It's based on the 2016 ACS data, that's correct.

IbdWnys3

Abowd - Direct

1 Q. Right, so the 5.1 percentage point estimate, that's based  
2 on a comparison of 2010 decennial census response rates and  
3 2010 ACS response rates whereas the 5.8 percentage point  
4 estimate, that's based on a comparison of 2010 decennial  
5 response rates to 2016 ACS response rates, correct?

6 A. Yes, that's correct.

7 (Continued on next page)

IBDsNYS4

Abowd - Direct

1 BY MR. HO:

2 Q. And the reason you like the 5.8 percentage point estimate  
3 better is because you think that when you're trying to assess  
4 the impact of a citizenship question today, it is more reliable  
5 to use more recent ACS data, correct?

6 A. You wanted more currency, that's correct.

7 Q. And you view this five point -- I'm sorry. Let me start  
8 that question again.

9 When you look at that 5.8 percentage point estimate and you  
10 view it in light of the 3.3 percentage point estimate from the  
11 2000 short form and long form comparison and the 5.1 percentage  
12 point estimate from the 2010 census and ACS 2010 ACS  
13 comparison, you agree that this 5.8 percentage point figure is  
14 an indicator that nonresponse rates to surveys with a  
15 citizenship question are increasing for households that might  
16 have a noncitizen, right?

17 A. I think we discussed this before. I've said that I am  
18 reluctant as a statistician to fit a trim line to those three  
19 numbers, but I did say that 5.8 is bigger than 5.1 and 5.1 is  
20 bigger than 3.3.

21 Q. Dr. Abowd, the 5.8 percentage point estimate, that is a  
22 conservative estimate, right?

23 A. We still haven't discussed what a statistician would mean  
24 by conservative, but assuming we are using that as an undefined  
25 term for the moment, yes.

IBDsNYS4

Abowd - Direct

1 Q. Lets define it.

2 One of the reasons why you consider the 5.8 percentage  
3 point estimate conservative is that it is based on ACS data,  
4 right, but the citizenship question could have more prominence  
5 on the decennial census questionnaire, correct?

6 A. The reason that I have characterized the 5.8 percentage  
7 point estimate as conservative is because it was translated  
8 into what I believe, and others at the Census Bureau believe,  
9 is a conservative estimate of the cost implications of that  
10 self-response.

11 As a point estimate itself, it is what it is. It  
12 is the best available point estimate of the decline in  
13 self-response that the data could produce. So it was used in a  
14 conservative way in the sense that it produced a conservative  
15 cost estimate. A point estimate has a standard error band  
16 around it, and in that sense, it is as good as the analysis  
17 that led up to it can be for the purposes of estimating the  
18 decline in self-response rates.

19 Q. Dr. Abowd, I didn't ask you about all the different reasons  
20 why you would describe it as a conservative estimate. My  
21 question was much simpler than that. It was simply this.

22 One reason why the 5.8 percentage point estimate is  
23 conservative is because it is based on a comparison of  
24 self-response rates on the ACS, but a citizenship question on  
25 the decennial census questionnaire, which is much shorter,

IBDsNYS4

Abowd - Direct

1 could have much more prominence.

2 You agree with that, right, Dr. Abowd?

3 A. I didn't think I heard the "could" the first time, but yes,  
4 I do agree with that statement.

5 Q. Now, the greater prominence of a citizenship question on  
6 the decennial census questionnaire means that it could have a  
7 larger effect in terms of depressing self-response rates to the  
8 questionnaire than a citizenship question would have when  
9 placed among the dozens of questions on the ACS, correct?

10 A. That's what could have a greater impact means, yes.

11 Q. Now, another issue is that the 5.8 percentage point  
12 estimate as we discussed earlier, that is based on 2016 data,  
13 which is more recent than 2010 data, right?

14 A. Yes, that's correct.

15 Q. And, Dr. Abowd, you agree that a question that was already  
16 sensitive at one point could become more sensitive at a later  
17 time due to a change in the political environment, right?

18 A. Yes, it could.

19 Q. And it is safe to say that if something happened after 2016  
20 that might have made citizenship a more salient issue, that  
21 that would not be reflected in your 5.8 percentage point  
22 estimate, correct?

23 A. Anything that happened after 2016 would not be reflected in  
24 that estimate, correct.

25 Q. OK. We'll come back to that later.

IBDsNYS4

Abowd - Direct

1 But just to round out the issues, Dr. Abowd, one other  
2 issue is that the 5.8 percentage point estimate, that's only an  
3 estimate about the reduction in self-response for households  
4 where everyone has not been confirmed to be a citizen, correct?

5 A. That's correct.

6 Q. So it doesn't take into account any reduction in  
7 self-response rates from all citizen households, correct?

8 A. That's correct.

9 Q. You would agree that the assumption that a citizenship  
10 question on the census in 2020 will have no effect on all  
11 citizen households, that that assumption is probably wrong,  
12 right, Dr. Abowd?

13 A. That is an assumption and there is no evidence in the data  
14 to say whether it is right or wrong.

15 Q. But you think, Dr. Abowd, that to assume that a citizenship  
16 question would have no effect on all citizen households, that  
17 to make that assumption, that would probably be wrong, right  
18 Dr. Abowd?

19 A. It would be better to have information about how all  
20 citizen households actually responded to a citizenship question  
21 on the census.

22 Q. Dr. Abowd, do you remember giving a deposition in this case  
23 on October 12, 2018?

24 A. There were so many. Yes, I do.

25 Q. I believe it was your fourth deposition in the case.

IBDsNYS4

Abowd - Direct

1 A. Yes, it was.

2 Q. OK. Can we bring up that deposition transcript and page  
3 198, starting at line 7, please.

4 Dr. Abowd, you were under oath that day, correct?

5 A. Yes, I was.

6 Q. And you told the truth that day, correct?

7 A. Yes, I did.

8 Q. All right.

9 "Q. And what's your basis for saying it would fall in that  
10 part of the range?

11 "A. The -- the recent data that we analyzed underlies the 5.8  
12 percent and 28.6 percent that's in column two, give you -- on  
13 this estimate, 82.5 million and, in the working paper, 91.2  
14 million. No significance should be attributed to that  
15 difference in the estimate. It has to do with the base that  
16 was used in calculating them.

17 We said in our advice to the secretary, and I continue to  
18 believe in my expert opinion, that that's a lower bound, a  
19 cautious estimate, and that the hypothesis underlying that  
20 estimate that there won't be any effect in the households that  
21 have citizens is probably wrong. It's only maintained in order  
22 to be able to say something about the target population, which  
23 is the ones that might have a noncitizen or that definitely  
24 have a noncitizen.

25 Q. Was that the question that was posed to you that day and

IBDsNYS4

Abowd - Direct

1 your answer to it?

2 A. Yes, they were.

3 Q. Dr. Abowd, to the best of your knowledge, no one at the  
4 Census Bureau has conducted any statistical analysis  
5 specifically addressing the question of whether even among  
6 households that are all citizens, the inclusion of a  
7 citizenship question could have some effect on their response  
8 rates, correct?

9 A. That's correct.

10 Q. I want to talk about a different analysis in your January  
11 memo, Plaintiffs' Exhibit 22, about the effect of the  
12 citizenship question that's not exclusively about noncitizen  
13 households. And lets turn to page four in your memory and the  
14 header B1, quality of citizenship responses.

15 Now, in this section of your memo, Dr. Abowd, you discuss  
16 item nonresponse rates for the citizenship question on the  
17 American Community Survey, correct?

18 A. Yes, that's correct.

19 Q. And item nonresponse is different from unit nonresponse,  
20 right?

21 A. Yes, that's correct.

22 Q. Item nonresponse is when someone returns a survey, but they  
23 don't answer a particular question on that survey, correct?

24 A. That's correct.

25 Q. OK. I want to focus on the second paragraph under this



IBDsNYS4

Abowd - Direct

1 header. Starting with in the period.

2 Now, in this paragraph, you're describing an analysis of  
3 item nonresponse rates to the citizenship question on the  
4 American Community Survey, right?

5 A. Yes, that's correct.

6 Q. And you're looking at item nonresponse rates on the  
7 American Community Survey from 2013 to 2016, right?

8 A. Yes, that's correct.

9 Q. And in that analysis, you're comparing racial and ethnic  
10 subgroups, correct?

11 A. Yes.

12 Q. And you found that the item nonresponse rate to the  
13 citizenship question for the mail in ACS for non-Hispanic  
14 whites during this period ranged from 6 to 6.3 percent, correct?

15 A. Yes.

16 Q. And you also found that during the same period, the item  
17 nonresponse on the citizenship question for the mail in ACS for  
18 non-Hispanic blacks ranged from 12 percent to 12.6 percent,  
19 correct?

20 A. Correct.

21 Q. So that is twice as high as the item nonresponse rate  
22 during this period on the ACS citizenship question for blacks  
23 as compared to non-Hispanic whites, correct?

24 A. Correct.

25 Q. You also found during this period that the item nonresponse

IBDsNYS4

Abowd - Direct

1 rate on the citizenship question for the mail-in ACS for  
2 Hispanics ranged from 11.6 percent to 12.3 percent, correct?

3 A. Correct.

4 Q. And you also looked at the ISR instrument.

5 That's the Internet version of the ACS, correct?

6 A. Yes, that's correct.

7 Q. So in 2016, the Internet ACS item nonresponse rates for the  
8 citizenship question for non-Hispanic whites was 6.2 percent,  
9 correct?

10 A. Yes.

11 Q. But for Hispanics, the item nonresponse rate to the  
12 citizenship question on the Internet version of the ACS was  
13 more than twice as high, it was 15.5 percent, correct?

14 A. I am pausing because you highlighted the 2013 answer first,  
15 and then the 2016 answer, I think. Unless I'm just confused  
16 reading the text.

17 Q. I think you're right. But the numbers for item nonresponse  
18 on the 2013 and 2016 ISR for non-Hispanic whites were the same,  
19 right, Dr. Abowd, 6.2 percent?

20 A. Yes. OK. All right.

21 Q. If we compare the 2016 ACS item nonresponse for  
22 non-Hispanic whites to Hispanics, it is 6.2 percent for  
23 non-Hispanic whites, 15.5 percent for Hispanic whites?

24 A. That's correct.

25 Q. More than twice as high for Hispanics, correct?

IBDsNYS4

Abowd - Direct

1 A. Correct.

2 Q. You would characterize the item nonresponse rate for  
3 Hispanics on the 2016 ACS Internet version for the citizenship  
4 question as much higher than they are for non-Hispanic whites,  
5 right?

6 A. I believe that is what I said, yes.

7 THE COURT: Can I interrupt for one moment?

8 Can you tell me what the Internet version of the ACS  
9 is, who does that, and how it differs?

10 THE WITNESS: Yes, your Honor.

11 American Community Survey has a fixed set of  
12 questions, but they are delivered in two formats. One is a  
13 paper questionnaire that you fill out with pencil and mail  
14 back, but you can also elect to do it online. And you go to  
15 our website and you bring up the questionnaire and put in your  
16 invitation to respond, and then you're asked the questions in  
17 an online instrument. You are still self-administering. You  
18 take the ACS in an Internet instrument, which we call an  
19 Internet self-response instrument.

20 THE COURT: All right. When you say invited to, is  
21 that you received the form in the mail and it instructs you  
22 that you can either fill it out and mail it back, or  
23 alternatively, you can go online and do it online?

24 THE WITNESS: That's correct.

25 THE COURT: What proportion of the people who respond

IBDsNYS4

Abowd - Direct

1 use the Internet version versus the paper version?

2 THE WITNESS: Oh, I have memorized so many numbers  
3 for this trial. I don't have that one memorized.

4 It is a substantially higher proportion use the  
5 Internet self-response instrument than the mail-back  
6 instrument, but I don't recall the exact proportions, your  
7 Honor.

8 THE COURT: Do you know or do you have an opinion why  
9 the rates would differ on the Internet version versus the paper  
10 version?

11 Is there some difference that you know of or  
12 understand with respect to the population that does it on the  
13 internet versus mailing it in?

14 THE WITNESS: Generically, the reason why the item  
15 nonresponse rates differ on an Internet self-response  
16 instrument is because we sometimes prompt and we sometimes let  
17 the items go through without prompting. We generally prompt on  
18 demographic items, including items, like, race and ethnicity.

19 THE COURT: When you say prompt, what do you mean?

20 THE WITNESS: Make sure that the respondent didn't  
21 want to respond to that question.

22 THE COURT: So in other words, you would say are you  
23 sure you didn't want to respond to the previous question or  
24 something of that nature?

25 THE WITNESS: Yes, something like that.

IBDsNYS4

Abowd - Direct

1 THE COURT: And obviously you can't do that on the  
2 paper form?

3 THE WITNESS: That's correct.

4 THE COURT: Mr. Ho.

5 MR. HO: Thank you, your Honor.

6 BY MR. HO:

7 Q. Dr. Abowd, you included this analysis of item nonresponse  
8 to the citizenship question on the American Community Survey  
9 because it suggests or, I'm sorry, because it is suggestive  
10 statistical evidence that a citizenship question on the census  
11 could see higher nonresponse rates from Hispanics as compared  
12 to non-Hispanic whites, correct?

13 A. Yes.

14 Q. I just want to talk about change over time here.

15 According to your memo for non-Hispanic whites, the item  
16 nonresponse rate to the citizenship question on the ACS between  
17 2013 and 2016 either didn't change at all on the Internet or  
18 didn't change much for the mail-in version, right?

19 A. For which group?

20 Q. Non-Hispanic whites.

21 A. Correct.

22 Q. But item nonresponse to the citizenship question on the ACS  
23 increased for Hispanics during the same period of time,  
24 correct?

25 A. Yes, it did. I think it is called out on the paragraph

IBDsNYS4

Abowd - Direct

1 there.

2 Q. OK. Lets look at how you analyzed this in the Brown,  
3 et al. memo, Plaintiffs' Exhibit 162. I want to look at page  
4 nine, figure two.

5 THE COURT: While we're doing that, let me go back to  
6 what I asked before.

7 I would think, just intuitively, that the prompt would  
8 actually increase the response rate because it would catch some  
9 people who might not have meant to skip it.

10 Why would you point to that as a reason that it would  
11 actually be higher?

12 THE WITNESS: I apologize, your Honor. I gave you the  
13 explanation for why we generally get low nonresponse rates on  
14 self-response than on paper.

15 In this case, it is probably a difference in the  
16 proportion of people from the different sub populations who  
17 respond in the two modes.

18 THE COURT: Meaning?

19 THE WITNESS: I don't have any specific data with me.

20 THE COURT: So your opinion or speculation is that  
21 when you say difference just in terms of the kinds of the  
22 people who elect to respond online versus on paper, that there  
23 is some difference in that population?

24 THE WITNESS: Yes. Yes, that's right.

25 THE COURT: All right.

IBDsNYS4

Abowd - Direct

1           You may proceed, Mr. Ho.

2           MR. HO: Thank you, your Honor.

3 BY MR. HO:

4 Q. Now, during this same period that we have been discussing,  
5 2013 to 2016, item nonresponse for Hispanic to the question  
6 about sex, that is, are you male or female on the American  
7 Community Survey declined, correct?

8 A. So that is the blue checkered or dotted bars, and they are  
9 all below the zero line. So yes, correct.

10 Q. Just so the record is clear, between 2013 and 2016, item  
11 nonresponse for Hispanic on the citizenship question increased  
12 but item nonresponse on the question about sex decreased,  
13 correct?

14 A. Yes.

15 Q. So, Dr. Abowd, it is correct to say that the increase in  
16 item nonresponse to the citizenship question on the ACS among  
17 Hispanic does not reflect a trend of item nonresponse to all  
18 questions increasing during that same period, correct?

19 A. Yes, that would be a correct conclusion.

20 Q. I want to talk about the third analysis in your January  
21 memo, the one related to breakoff rates.

22       Lets turn back to Plaintiffs' Exhibit 22.

23       THE COURT: Before we do that, this chart is for  
24 Hispanic respondents?

25       THE WITNESS: Your Honor, the chart has three

IBDsNYS4

Abowd - Direct

1 different questions on it. The item nonresponse rate for sex,  
2 which is the blue bar; for age, which is the -- I think that is  
3 orange, might be red hashed bar; and for citizenship, which is  
4 the gray bar.

5 Then the first set of three bars is for all  
6 respondents. The next set is non-Hispanic white.

7 THE COURT: I missed the bottom labels. Sorry about  
8 that. Thank you.

9 THE WITNESS: No problem.

10 MR. HO: I'm sorry. I should have pointed that out,  
11 your Honor.

12 BY MR. HO:

13 Q. Can we now turn to the breakoff rate analysis, the third  
14 analysis in your January memo, page five of Plaintiffs'  
15 Exhibit 22. I want to look under header B3, breakoff rate  
16 analysis.

17 This is the part of your memo where you describe the  
18 analysis of breakoff data for the 2016 ACS, correct?

19 A. Yes, it is.

20 Q. Just to define it, a breakoff rate is the rate at which,  
21 when people are responding to the ACS questionnaire online,  
22 they stop answering the survey upon encountering a screen with  
23 a particular question, correct?

24 A. Yes, that is how it is defined.

25 Q. In 2016, breakoff rates on the citizenship question on the



IBDsNYS4

Abowd - Direct

1 ACS for Hispanic were much higher than they were for  
2 non-Hispanic whites, correct?

3 A. I think you're summarizing the second sentence in the  
4 second paragraph, and that's correct.

5 Q. As the data is presented in this memo, the breakoff rate on  
6 the citizenship question on the 2016 ACS for Hispanic was eight  
7 times what it was for non-Hispanic whites, correct?

8 A. Yes, that's correct.

9 Q. This breakoff rate analysis indicates that the citizenship  
10 question is more sensitive for Hispanic than for non-Hispanic  
11 whites, correct?

12 A. That is what we concluded, correct.

13 Q. Now, it is also correct, Dr. Abowd, that the difference in  
14 breakoff rates for Hispanic as compared to non-Hispanic whites  
15 is much higher for questions concerning year of entry and  
16 citizenship than for any other of the questions on the ACS with  
17 the exception of English proficiency, correct?

18 A. So I'm happy to go over those data with you if you bring up  
19 the chart, but I don't have them memorized. It is one of the  
20 high breakoff rates. I am willing to say that without seeing  
21 the table.

22 Q. OK. Lets bring up the white paper, Plaintiffs' Exhibit  
23 162, and page ten. Lets look at the last paragraph here.

24 Starting with the second to last sentence, citizenship  
25 related questions. Why don't you go ahead and read that to

IBDsNYS4

Abowd - Direct

1 yourself, Dr. Abowd, and let me know when you're ready.

2 (Pause)

3 A. Yes, I've read it.

4 Q. So it is correct, right, Dr. Abowd, that breakoff rates for  
5 the citizenship question on the ACS for Hispanics are much  
6 higher than for non-Hispanic whites generally, first of all,  
7 that's correct, right?

8 A. That's correct.

9 Q. And that the difference between those breakoff rates is  
10 higher for questions concerning year of entry and citizenship  
11 than for any other question on the ACS, with the exception of  
12 English language proficiency, correct?

13 A. Yes, that's correct.

14 Q. Now, your January memo presents only 2016 ACS breakoff  
15 data, correct?

16 A. That's correct.

17 Q. But the Brown memo here also has 20 -- I'm sorry. Strike  
18 that.

19 The reason why your memo to Secretary Ross only has 2016  
20 breakoff data in it is because the 2017 ACS breakoff data was  
21 incomplete as of that time, correct?

22 A. That's correct.

23 Q. But the swat team has looked at 2017 ACS breakoff data,  
24 right?

25 A. Yes, they are.

IBDsNYS4

Abowd - Direct

1 Q. And the Census Bureau has now made the 2017 ACS breakoff  
2 data available as part of this litigation, correct?

3 A. We released it as a public document, yes.

4 Q. OK. Lets turn to Plaintiffs' Exhibit 9. This has been  
5 admitted.

6 Dr. Abowd, this is a table summarizing the rate at which  
7 different groups break off on the ACS on different questions,  
8 correct?

9 A. Yes. That's correct.

10 Q. If we go down to citizenship, the left-hand column, the  
11 breakoff rate for non-Hispanic whites on the citizenship  
12 question in the 2017 ACS is .03489, correct?

13 A. Yes, I see it. Yes, that's correct.

14 Q. OK. The citizenship question breakoff rate on the 2017 ACS  
15 for Hispanic is .4343, correct?

16 A. The highlighting just disappeared.

17 Yes, that's correct.

18 Q. OK. So just to summarize this, it is correct to say that  
19 the citizenship question breakoff rate on the 2017 ACS for  
20 Hispanic is more than 12 times what it is for non-Hispanic  
21 whites, correct?

22 A. Yes, that's correct.

23 Q. OK. So just to summarize, in 2016, the Hispanic breakoff  
24 rate was eight times what it was for whites, in 2017, it was  
25 12 times what it was for whites, correct?

IBDsNYS4

Abowd - Direct

1 MR. EHRLICH: Objection, asked and answered.

2 THE COURT: Overruled.

3 A. Yes, it's correct.

4 Q. It is fair to say that in your January memo to Secretary  
5 Ross, you concluded that adding a citizenship question would be  
6 a sensitive question for Hispanics, correct?

7 A. I believe we did, yes.

8 Q. You believe, Dr. Abowd, that Hispanic are more sensitive to  
9 survey questions about citizenship than they were a few years  
10 ago, correct?

11 A. Yes, that is what's the data appear to show.

12 Q. That increased sensitivity, you would agree, is reflected  
13 in the 2017 ACS data, correct?

14 A. Increased sensitivity is reflected in the 2017 data, yes.

15 Q. That postdates your 5.8 percentage point estimate, which  
16 was based only on data through the 2016 ACS, correct?

17 A. That's correct.

18 Q. Non-Hispanic whites by contrast, Dr. Abowd, are not more  
19 sensitive to survey questions about citizenship than they were  
20 a few years ago, correct?

21 A. I think, are you characterizing all the evidence?

22 In which case I think that is probably right.

23 Q. Yes.

24 A. OK.

25 Q. I am characterizing all of the evidence.

IBDsNYS4

Abowd - Direct

1 Is that correct?

2 A. Yes.

3 Q. Dr. Abowd, the Census Bureau believes that Hispanics will  
4 respond to the citizenship question on the 2020 census at lower  
5 rates than non-Hispanic whites, correct?

6 A. To the extent that Hispanicity is related -- to ethnic  
7 origin Hispanic is related to a household that potentially  
8 contains at least one noncitizen, we have credible quantitative  
9 evidence that there could be a lower self-response rate, yes.

10 Q. Dr. Abowd, it is fair to say that you believe that unit  
11 self-response rates, that is, refusing to self-respond to the  
12 2020 census questionnaire at all, that that will happen at a  
13 higher rate for Hispanics than non-Hispanic whites as a result  
14 of the citizenship question, correct?

15 A. So what I think I've said consistently is the Hispanic  
16 origin, Hispanic ethnicity, is highly correlated with being in  
17 what we would call the treatment group from that natural  
18 experiment. To the extent that that correlation is true. The  
19 conclusions of the natural experiment hold.

20 Q. The answer to my question is yes, Dr. Abowd?

21 A. I am trying to qualify that we didn't specifically analyze  
22 it for Hispanics, because that is not the question that the  
23 data analysis addressed.

24 But I concur that they are highly correlated with the  
25 households that may include a noncitizen or person of unknown

IBDsNYS4

Abowd - Direct

1 citizenship status.

2 To that extent, the conclusion is correct.

3 Q. Dr. Abowd, you agree, do you not, that the analysis of item  
4 nonresponse on the ACS and breakoff rates to the ACS for  
5 Hispanics suggests that response rates to the 2020 census will  
6 fall more for Hispanics than for non-Hispanic whites as a  
7 result of the citizenship question, correct?

8 A. Item response rates on the citizenship question, that's  
9 what that shows.

10 Q. That's not my question, Dr. Abowd.

11 A. That is why I answered what I did.

12 Q. OK. But my question, Dr. Abowd, is this: You agree, do  
13 you not, that the item nonresponse rate analysis that you  
14 conducted for the ACS and the breakoff rate analysis that you  
15 conducted for the ACS, suggest that unit nonresponse on the  
16 2020 census will decline more for Hispanics than for  
17 non-Hispanic whites as a result of the citizenship question,  
18 correct?

19 MR. EHRLICH: Objection.

20 THE COURT: Basis?

21 MR. EHRLICH: Asked and answered several times, your  
22 Honor.

23 THE COURT: I don't think it has been answered.

24 Overruled.

25 A. I imagine you're going to show me in the record why you

IBDsNYS4

Abowd - Direct

1 think I've already said that.

2 All I want to say is that, to the extent that Hispanic  
3 and being in the treatment group for the natural experiment are  
4 highly correlated, that would justify that conclusion.

5 The breakoff analysis and the item analysis justify  
6 the conclusion that the citizenship question itself won't be  
7 responded to as at higher rate by Hispanics.

8 THE COURT: Is there a high correlation between the  
9 treatment group and Hispanic origin?

10 THE WITNESS: Yes, your Honor, there is.

11 MR. HO: Thank you, your Honor.

12 BY MR. HO:

13 Q. You used the phrase natural experiment or the term natural  
14 experiment before.

15 Do you remember that, Dr. Abowd?

16 A. Yes, I do.

17 Q. Would you agree that a natural experiment is an  
18 observational study in which one group of individuals has been  
19 exposed to control conditions while another group has been  
20 exposed to treatment conditions, such that a change in outcome  
21 between the two groups could plausibly be ascribed to the  
22 treatment?

23 A. I agree with everything that you said and would add that  
24 the definitions that put you into either the treatment or the  
25 control group have to contain some element of natural

IBDsNYS4

Abowd - Direct

1 randomization.

2 Q. Here, the control is for purpose -- when we talk about the  
3 natural experiments that you conducted here, the control is the  
4 2010 decennial census questionnaire without a citizenship  
5 question, and the treatment is the 2010 ACS or the 2016 ACS,  
6 which has a citizenship question, correct?

7 A. Technically, the treatment is the change, but yes, that's  
8 basically right.

9 Q. The premise then behind this natural experiment is that it  
10 is reasonable to infer that a differential lower self-response  
11 on the ACS questionnaire for households that have a noncitizen  
12 or a person of unknown citizenship status is due to the  
13 citizenship question on the ACS, which is sensitive for that  
14 population, correct?

15 A. So the goal of the natural experiment is to do that  
16 difference indifference with the plausible, the actual  
17 randomization, which in this case is who got the ACS -- that's  
18 a random subset of the population -- and then to explore the  
19 answer you get to make sure that there aren't confounders that  
20 could have explained that difference in the case of the  
21 comparison of the ACS to the 2010 census. There are potential  
22 confounders. So the initial analysis did not make any effort  
23 to control for those confounders and the subsequent analyses  
24 did.

25 Q. Dr. Abowd, you would characterize the analysis that is



IBDsNYS4

Abowd - Direct

1 reflected in your January memo as a well-designed natural  
2 experiment, correct?

3 A. Yes.

4 Q. Dr. Abowd, notwithstanding what Secretary Ross says in his  
5 memo about evidence of an effect of a citizenship question on  
6 self-response rates, you believe that the Census Bureau did  
7 provide empirical support for its belief that adding a  
8 citizenship question will reduce response rates to the 2020  
9 census, correct?

10 A. Self-response rates, correct.

11 Q. And, in fact, Dr. Abowd, when you met with Secretary Ross  
12 on February 12, you told him that the Census Bureau thought  
13 that the difference in self-response rates on the ACS and the  
14 census, when comparing citizen and noncitizen households, was  
15 probably related to the citizenship question on the ACS,  
16 correct?

17 A. That's my recollection, yes.

18 Q. Dr. Abowd, I want to bring up again your January memo,  
19 Plaintiffs' Exhibit 22, page five. I want to look at the last  
20 sentence.

21 I'm sorry. We want Dr. Abowd's January memo, which I  
22 believe is Plaintiffs' Exhibit 22. Maybe I have that number  
23 wrong.

24 THE COURT: I believe that is right.

25 MR. HO: It is 22, page five. I want to look at the

IBDsNYS4

Abowd - Direct

1 last sentence.

2 Sorry. The last sentence of the first paragraph.

3 Excuse me.

4 Sorry. I guess I have this wrong again. The top  
5 paragraph, last sentence.

6 Thanks.

7 BY MR. HO:

8 Q. You wrote in your memo: It is therefore a reasonable  
9 inference that a question on citizenship would lead to some  
10 decline in overall self-response because it would make the  
11 2020 census modestly more burdensome in the direct sense and  
12 potentially much more burdensome in the indirect sense that it  
13 would lead to a larger decline in self-response for noncitizen  
14 households, correct?

15 A. That is what it says, yes.

16 Q. And here, that is consistent with what your opinion is  
17 about having produced credible qualitative evidence of the  
18 effect of the citizenship question on self-response rates,  
19 correct?

20 A. Yes, that's correct.

21 Q. Now, this opinion, which is based on a natural experiment,  
22 Dr. Abowd, that is not the same as a randomized control test or  
23 RCT, correct?

24 A. That's correct.

25 Q. If you had done an RCT, that would have been if you had

IBDsNYS4

Abowd - Direct

1 conducted a new randomized experiment with control and  
2 treatment groups instead of trying to observe something that  
3 had already occurred, correct?

4 A. There is more to it than that, but that is -- all that you  
5 said is correct.

6 Q. OK. An RCT, that would provide what you would describe  
7 as gold standard evidence for assessing the effect of a  
8 citizenship question on response rates, correct?

9 A. Yes, that's correct.

10 Q. OK. If the Census Bureau had conducted an RCT, it would  
11 have had quantitative data that could isolate the effect of a  
12 citizenship question in terms of how that would perform in the  
13 context of the decennial census enumeration questionnaire,  
14 correct?

15 A. If there had been an RCT available, we would have been able  
16 to make an internally valid comparison of a questionnaire with  
17 and without a citizenship question as to its effect on  
18 self-response rates for the whole population.

19 Q. Do you remember in Secretary Ross' memo where he uses the  
20 word isolate and he said that the Census Bureau could not  
21 isolate the percentage in the self-response decline that could  
22 be attributable to the citizenship question?

23 Does that ring a bell?

24 A. A sentence like that rings a bell, yes.

25 Q. If you had conducted an RCT, you could have isolated the

IBDsNYS4

Abowd - Direct

1 effect of the citizenship question on self-response rates in  
2 the way that Secretary Ross described, correct?

3 A. I think I've said consistently that I am very reluctant to  
4 interpret what the Secretary meant by sentences in his memo.  
5 If we had run a randomized control trial on self-response  
6 rates, we would have been able to say, without qualification,  
7 that the difference between the self-response rate with and  
8 without a citizenship question was X.

9 THE COURT: And putting aside what the Secretary may  
10 or may not have meant, I take it an RCT would allow you to  
11 isolate the effect of a particular question on response rates?

12 THE WITNESS: Yes, it would, your Honor.

13 Q. Dr. Abowd, there has been no RCT of the census enumeration  
14 questionnaire with the citizenship question, correct?

15 A. That's correct.

16 Q. A group of decision-makers, including Commerce Under  
17 Secretary Karen Dunn Kelley decided not to conduct an RCT of  
18 the citizenship question, correct?

19 A. A group of decision-makers at the Census Bureau with  
20 collaboration of the Under Secretary decided not to conduct a  
21 randomized controlled trial of the content of the citizenship  
22 question.

23 Q. But if you had conducted that RCT, you would have had the  
24 data that would have allowed you to isolate the effect of a  
25 citizenship question in the context of the decennial census

IBDsNYS4

Abowd - Direct

1 enumeration questionnaire, correct?

2 A. So you haven't shown me the RCT we're talking about, but  
3 I'll assume it is the one we've talked about several other  
4 occasions.

5 That RCT did have a treatment and control that would have  
6 isolated the effect of the citizenship question by itself on  
7 self-response, yes.

8 Q. We'll get back to that in a minute, Dr. Abowd.

9 I just want to ask you, even in response of that RCT, you  
10 agree that the Census Bureau can use the results of its  
11 analysis of the natural experiment to draw conclusions about  
12 the effect of a citizenship question on the 2020 census,  
13 correct?

14 A. You're using the results of the natural experiment to do  
15 planning for the 2020 census based on its quantitative  
16 implications, yes.

17 Q. You believe that the results from your natural experiment  
18 are sufficiently reliable for the census Bureau to make  
19 decisions planning for the 2020 census, correct?

20 A. We believe they are the best available data, correct.

21 Q. Dr. Abowd, you agree that the macro environment can affect  
22 response rates?

23 A. Yes.

24 Q. Part of the macro environment is the political context,  
25 right?

IBDsNYS4

Abowd - Direct

1 A. Yes, it is.

2 Q. So the political context can affect response rates,  
3 correct?

4 A. Yes, it can.

5 Q. You agree that the political environment around immigration  
6 could amplify the effect of a citizenship question on response  
7 rates in comparison to, say, 2010, correct?

8 A. Yes, it could.

9 Q. And it could do that in comparison to, say, 2016, correct?

10 A. Yes, it could.

11 Q. You know, the last time there was an inquiry of the  
12 citizenship status of every member of every household in the  
13 United States was 1950, correct?

14 A. Yes, that's correct.

15 Q. You would agree that the macro environment is a little  
16 different now, right, Dr. Abowd?

17 A. Well, I'm not a macro economist, but I think it is, yes.

18 Q. I want to ask you about CBAMs research, Dr. Abowd.

19 CBAMs stands for census barriers, attitudes, and  
20 Motivator studies, correct?

21 A. Excuse me. Yes, it is.

22 Q. The CBAMs research, that tells you a little something about  
23 the macro environment, right?

24 A. That is what it was designed to do, yes.

25 Q. OK. CBAMs consists of a survey of 50,000 households in a

IBDsNYS4

Abowd - Direct

1 series of more than 40 focus groups, correct?

2 A. 42 focus groups.

3 Q. The primary reason for conducting CBAMs is to inform the  
4 integrated partnership and communication program for the 2020  
5 census, correct?

6 A. Yes, that's correct.

7 Q. The Census Bureau finds that the CBAMs research that you do  
8 is sufficiently reliable as to provide actionable information  
9 that informs the communication and partnership campaigns  
10 conducted by the Census Bureau predicting, correct?

11 A. Yes, that's correct.

12 Q. Lets look at Plaintiffs' Exhibit 163. I believe this has  
13 been admitted into the record.

14 Dr. Abowd, this is a PowerPoint summarizing rising  
15 information from the 2018 CBAMs focus groups, correct?

16 A. I am only pausing because I am not sure it is exclusively  
17 the focus groups, but it is about the CBAMs research.

18 Q. This PowerPoint was created by Young & Rubicam at the  
19 direction of the Census Bureau, correct?

20 A. Young & Rubicam is the prime contractor on the integrated  
21 communication contract. It is working with a team of internal  
22 Census Bureau specialists. They jointly prepared this  
23 PowerPoint labeled with both logos, I believe.

24 Q. This PowerPoint was presented to Under Secretary Kelley and  
25 to Secretary Ross, correct?

IBDsNYS4

Abowd - Direct

1 A. I believe I testified at deposition that I believe that is  
2 correct, but I wasn't at either of those -- I wasn't at the  
3 presentation of the Under Secretary, so I'm not sure whether  
4 this is exactly the same one that she saw and the Secretary  
5 saw. I believe the content was very similar, but that is what  
6 I know.

7 Q. You were in the room when this was presented to Secretary  
8 Ross?

9 A. I was in the room when a similar presentation was made to  
10 Secretary Ross that had a different date on it.

11 Q. But it was materially identical to the PowerPoint here  
12 before you, correct?

13 A. Yes, that's right.

14 Q. You're not aware of any revised or more recent versions of  
15 this PowerPoint?

16 A. No, I'm not.

17 Q. Lets turn --

18 A. Actually, excuse me, I haven't compared this PowerPoint to  
19 the recent presentation to the National Advisory Committee, so  
20 I think, absent that comparison, I didn't notice any big  
21 differences. They give a more comprehensive version than what  
22 I remember being presented to the Secretary, but I don't think  
23 that the general conclusions or even a lot of the specific  
24 conclusions are very different.

25 Q. We'll go over that PowerPoint too, Dr. Abowd.



IBDsNYS4

Abowd - Direct

1           Lets stick with this one for now.

2       A. All right.

3       Q. And look at page five, which I believe is page six of the  
4       PDF. So the next page. Thank you.

5           The title of this slide is Distrust in Census and  
6       Government May Complicate Outreach to Some Communities,  
7       correct?

8       A. Yes, it is.

9       Q. OK. The second bullet from the bottom reads: A number of  
10      focus group participants responded negatively to adding the  
11      citizenship question, most notably Spanish (U.S. mainland) as  
12      well as Vietnamese, Chinese, NHPI, and members of the female  
13      MENA group.

14           Did I read that right?

15      A. Yes, you did.

16      Q. Now, most of these focus groups were conducted after the  
17      announcement of a citizenship question to be included in the  
18      census, correct?

19      A. 30 of 42, yes.

20      Q. And people recruited into the focus groups referenced in  
21      that bullet that we just discussed, they mentioned the  
22      citizenship question as a barrier to census participation,  
23      correct?

24      A. Yes, that's correct.

25      Q. This bullet in this PowerPoint was included to draw the

IBDsNYS4

Abowd - Direct

1 attention of the people for whom the PowerPoint was intended,  
2 correct?

3 A. Would you mind restating that question? I couldn't unpack  
4 it.

5 Q. Sure.

6 This bullet, starting with the number of focus group  
7 participants, that was included in this PowerPoint in order to  
8 draw the attention of the people for whom the PowerPoint is  
9 intended, right, Dr. Abowd?

10 MR. EHRLICH: Objection.

11 THE COURT: Sustained.

12 Q. Dr. Abowd, why was this bullet included in the PowerPoint?

13 A. The PowerPoint was prepared, as I understand it, to inform  
14 the Under Secretary.

15 Q. But why was this particular bullet included in the  
16 PowerPoint?

17 A. It summarizes one of the conclusions of the CBAMs focus  
18 group studies.

19 Q. Dr. Abowd, do you remember your third deposition in this  
20 case which occurred on October 5, 2018?

21 A. Yes.

22 Q. You were under oath that day, right?

23 A. Yes, I was.

24 Q. And you told the truth that day, right?

25 A. Yes, I did.

IBDsNYS4

Abowd - Direct

1 Q. OK. Lets bring that up and look at page four 43, starting  
2 with line five.

3 "Q. And why was this bullet included in the PowerPoint?

4 "A. I believe to draw the attention of people who are using  
5 this to -- that finding of the focus groups.

6 Q. Was that my question -- was that the question that was  
7 posed to you and your answer that day, Dr. Abowd?

8 A. Yes, it was.

9 Q. OK. And during the presentation of this PowerPoint to  
10 Secretary Ross, it was acknowledged that the citizenship  
11 question would be a challenge in conducting the 2020 census,  
12 correct?

13 A. Yes, it was.

14 Q. OK. Lets bring up Plaintiffs' Exhibit 152 now. This has  
15 also been admitted into the trial record.

16 Dr. Abowd, this is the 2020 CBAMs focus group audience  
17 summary reports, correct?

18 A. Yes, that's what they are.

19 Q. You've seen this document before, right?

20 A. Yes, I have.

21 Q. Lets go to page 22 of this document, which is Bates number  
22 13046.

23 This is part of the summary for focus groups  
24 consisting of participants who are U.S. mainland residents who  
25 speak Spanish, correct?

IBDsNYS4

Abowd - Direct

1 I believe that is at the top of the page.

2 A. This is the top of the page you said who speaks Spanish. I  
3 know there was both a Spanish-speaking Spanish and an  
4 English-speaking Spanish, so I'm not sure whether this  
5 particular page is both or one.

6 Q. When you say Spanish U.S. mainland, what does that refer  
7 to?

8 A. It means that the people recruited for this focus group  
9 were Hispanic origin and living in the U.S. mainland.

10 Q. Lets look at the third bolded paragraph on this summary.

11 The title or the first sentence is the citizenship question  
12 is a determining factor for participation, correct?

13 A. Yes.

14 Q. It reads: All four Spanish, U.S. mainland focus groups  
15 took place after the March 27, 2018, announcement that the 2020  
16 census will include a question on citizenship, correct?

17 A. Yes.

18 Q. And Spanish means Hispanic, Dr. Abowd, in that sentence?

19 A. I believe so, yes.

20 Q. OK. It goes on to read: Participants in all locations  
21 mentioned the citizenship question before the moderator asked  
22 about it, except for Houston group one participants, correct?

23 A. Yes.

24 Q. And it goes on to read: Most participants said that though  
25 they personally are citizens or legal residents and are not

IBDsNYS4

Abowd - Direct

1 afraid to answer the citizenship question, they know many  
2 others who will not fill out the question or the form  
3 altogether out of fear. While all participants expressed the  
4 desire to be counted, fear of deportation outweighs any  
5 benefit.

6 Did I read that right?

7 A. Yes, you did.

8 Q. Dr. Abowd, you agree that this focus group result is an  
9 indication from a hard-to-count population that the citizenship  
10 question viewed as extremely problematic for that population,  
11 correct?

12 A. It is an indicator of that, yes.

13 Q. And you acknowledge that with the citizenship question on  
14 the census, people who are afraid of deportation will be an  
15 extremely difficult group to count, correct?

16 A. They will be a very difficult group to count.

17 Q. Extremely, right, Dr. Abowd?

18 A. So I suppose we can discuss what the difference between  
19 "very" and 'extremely' is.

20 Q. In your words, Dr. Abowd, you would describe people, who  
21 are fearing deportation, as extremely hard to count in the 2020  
22 census, when you put a citizenship question on it, correct?

23 A. So very hard to get to self-respond. Whether they are hard  
24 to count or not depends on other operations in the 2020 census.

25 Q. All right. Dr. Abowd, lets go back to your October 5, 2018

IBDsNYS4

Abowd - Direct

1 deposition, page 451, line three.

2 MR. EHRLICH: Your Honor, I would note that the  
3 deposition testimony we're using here is his 30(b)(6) testimony  
4 in his capacity as a representative of the Census Bureau, and  
5 would object on that basis, to the extent it is asking him for  
6 personal knowledge that he may have.

7 THE COURT: Mr. Ho, that seems well founded.

8 MR. HO: I mean, he is testifying as a representative  
9 of the Census Bureau under the 30(b)(6), but, I mean, he uses  
10 the first person quite frequently in the deposition and  
11 expresses his understanding of events in his capacity as the  
12 chief scientist of the Census Bureau. I don't think there is  
13 any reason that I can't use his deposition testimony to impeach  
14 him on that basis.

15 MR. EHRLICH: His first person use was for ease of  
16 reference during the deposition, your Honor. You can't draw  
17 from this personal knowledge of what he may or may not know  
18 based on what the agency knows and what he testified on behalf  
19 of the agency.

20 THE COURT: All right. Tell you what. You'll have an  
21 opportunity to conduct cross-examination.

22 I think in that context, you can elicit from him the  
23 extent to which this testimony, if it is being offered as an  
24 inconsistent statement, is actually not his personal statement  
25 as opposed to his representative statement.

IBDsNYS4

Abowd - Direct

1 With that, you may proceed, Mr. Ho.

2 MR. HO: Thank you, your Honor.

3 BY MR. HO:

4 Q. Page 451, line three.

5 "Q. And aren't people afraid of deportation the least likely  
6 to participate at all in the census or to be swayed by NRFU  
7 efforts?

8 "A. I'm not prepared to say the least likely to participate at  
9 all. I'm tried to acknowledge that they're an extremely  
10 difficult group to count.

11 Q. Was that the question posed to you and was that your  
12 answer?

13 A. Yes, it was.

14 Q. Now, going back to the focus group summary, page 22 of it.  
15 It indicated here that Hispanic focus group members, that  
16 members of their community care about participation in the  
17 census, correct?

18 A. Yes.

19 Q. They express that they understood the benefits to their  
20 community of participating in the census, correct?

21 A. Yes, they did.

22 Q. And, Dr. Abowd, it is reasonable to conclude that they  
23 would like to participate in the census, correct?

24 A. That seems reasonable, yes.

25 Q. And what you get from this focus group is an indication

IBDsNYS4

Abowd - Direct

1 that members of this group would be more likely to self-respond  
2 if there was not a citizenship question on the 2020 census,  
3 correct?

4 A. Yes.

5 Q. I'm sorry?

6 A. Yes.

7 Sorry. Am I fading?

8 Q. Thank you.

9 This also indicates that if there is a citizenship question  
10 on the census, that trusted partners who try to carry forth the  
11 Census Bureau's message are going to have additional challenges  
12 in convincing members of this community to participate,  
13 correct?

14 A. I don't think you called out those sentences, but I assume  
15 they're in there.

16 Q. But you agree with that, right, Dr. Abowd, that given the  
17 results of this focus group, that you would conclude that the  
18 trusted partners that the Census Bureau relies on to carry  
19 forth the message that it is important to participate in the  
20 census, that they are going to have additional challenges  
21 carrying that message out than if there were no citizenship  
22 question on the census, correct?

23 A. Yes.

24 Q. I want to ask about a different document now, a different  
25 PowerPoint I think you referred to earlier why.



IBDsNYS4

Abowd - Direct

1           This is Plaintiffs' Exhibit 662, entitled 2020 Census  
2 Barriers, Attitudes, and Motivators study (CBAMs) Survey and  
3 Focus Groups: Key Findings for Creative Strategy. October 31,  
4 2018.

5           For the record, it has been admitted.

6           This is the PowerPoint that you were talking about earlier  
7 which includes both CBAMs survey results and focus group  
8 information, right, Dr. Abowd?

9           A. That's correct.

10          Q. Lets go to page 16 of the PowerPoint. It is page 16 of the  
11 PowerPoint, but 17 of the PDF.

12          This slide has some results of the CBAMs survey, correct?

13          A. Yes, it does.

14          Q. The fifth line here indicates that: 10 percent of  
15 respondents to the CBAMs survey think that the census is used  
16 to locate people living in the country without documentation,  
17 right?

18          A. Yes.

19          Q. And 37 percent aren't sure one way or the other whether or  
20 not that is the case, correct?

21          A. That's correct.

22          Q. All right. Lets turn to page 19 of the PowerPoint, which  
23 is page 20 of the PDF.

24          Dr. Abowd, this slide indicates that 19 percent of Asian  
25 and black CBAMs survey respondents think that the census is

IBDsNYS4

Abowd - Direct

1 used to locate people without documentation, correct?

2 A. Yes.

3 Q. Lets turn to the next page of the PowerPoint.

4 This slide summarizes some comments from Hispanic CBAMs  
5 focus group participants, correct?

6 A. Yes.

7 Q. And one Hispanic focus group participant said, I feel that  
8 it does go to the immigration agency, in regard to census  
9 responses, correct?

10 A. I think you're calling out the first quote there?

11 Yes.

12 Q. Yes.

13 Another Hispanic focus group participant said that  
14 they would not participate in the census because they --  
15 meaning immigration -- will know where we are and what our  
16 names are and where we live, correct?

17 A. That's what the quote says, yes.

18 Q. And another Hispanic focus group participant stated, I  
19 feel -- I'm sorry -- stated a concern that immigration  
20 enforcement, quote, will know where we are and what our names  
21 are and where we live, correct?

22 I'm sorry. I already did that one.

23 Lets look at page 29 of the PowerPoint, slide 30.

24 This has results from the CBAMs survey, correct?

25 A. Yes.

IBDsNYS4

Abowd - Direct

1 Q. The title of the slide is Respondents Worry About  
2 Confidentiality, correct?

3 A. That's correct.

4 Q. Specifically, 41 percent of Asians CBAMS survey respondents  
5 expressed worry about confidentiality, correct?

6 A. Yes, that is correct.

7 Q. And so did 41 percent of low English proficiency CBAMS  
8 survey respondents, correct?

9 A. Yes.

10 Q. Great. Lets turn to page 31 of the PowerPoint.

11 This had some results about concerns about data sharing of  
12 census responses, correct?

13 A. Yes.

14 Q. 37 percent of low English proficiency CBAMS respondents  
15 expressed concern about data sharing, right?

16 A. Yes.

17 Q. 36 percent of CBAMS respondents who responded in Spanish  
18 did too, correct?

19 A. Yes.

20 Q. And 32 percent of CBAMS respondents born outside of the  
21 United States did as well, correct?

22 A. Yes.

23 Q. And 32 percent of Hispanics overall believe that the census  
24 shares data with other agencies, correct?

25 A. Concerned about the census sharing data, correct.

IBDsNYS4

Abowd - Direct

1 Q. Thank you.

2 Can we turn to page 35. According to this slide, one in  
3 four CBAMS survey respondents fear that their answers to the  
4 2020 census will be used against them, correct?

5 A. Yes.

6 Q. And that's true for 41 percent of Asian CBAMS respondents,  
7 correct?

8 A. Yes.

9 Q. And true of 39 percent of CBAMS respondents born outside of  
10 the United States, correct?

11 A. Yes.

12 Q. And 34 percent of CBAMS respondents who responded in  
13 Spanish, correct?

14 A. Yes.

15 Q. Lets turn to page 42 of the PowerPoint. Page 43 of the  
16 PDF.

17 The title of this slide is The Citizenship Question  
18 May Be a Major Barrier, correct?

19 A. Yes, that is the title.

20 Q. And focus group participants expressed concern that the  
21 purpose of the question is to find undocumented immigrants,  
22 correct?

23 A. The call-outs in red up at the top?

24 Q. Yes.

25 A. Yes, that's correct.

IBDsNYS4

Abowd - Direct

1 Q. And there also was an indication from focus group  
2 participants that there is a concern due to the political  
3 discourse that we currently have, correct?

4 A. Yes, that is what it says.

5 Q. OK. In the bottom left-hand corner, there is a Hispanic  
6 focus group participant who stated, A lot of people are afraid.  
7 It doesn't matter if they ask you whether or not you're a  
8 citizen. The first question they ask you, are you Hispanic or  
9 Latino? And that's enough. That's all they need and people  
10 are scared.

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you see the one on the right that reads: Latinos will  
14 not participate out of fear. There was practically a hunt for  
15 us. Latinos are going to be afraid to be counted because of  
16 the retaliation that could happen. It's like giving the  
17 government information saying, oh, there are more here.

18 Correct?

19 A. That is what the quote says, correct.

20 Q. Lets turn to page 57 of the PowerPoint. Page 58 of the  
21 PDF.

22 This is a summary of Hispanics participating in the  
23 CBAMS research, correct?

24 A. Yes.

25 Q. So among Hispanics, 10 percent believe that the census is

IBDsNYS4

Abowd - Direct

1 used to locate people living in the country without  
2 documentation, correct?

3 A. That's not on this slide, I don't think, but you already  
4 showed it to me. That -- there it is. Yes, correct.

5 Q. And 34 percent express concern about the confidentiality of  
6 their answers, correct?

7 A. Correct.

8 Q. 32 percent express concern that their answers will be  
9 shared with other government agency, correct?

10 A. Correct.

11 Q. 33 percent express fear of repercussions from their census  
12 answers, correct?

13 A. Correct.

14 Q. The bullet under other considerations reads, focus group  
15 participants expressed intense fear that information will be  
16 shared with other government agency to help them find  
17 undocumented immigrants. Participants worried that their  
18 participation in the census could harm them personally or  
19 others in their communities/households they care about,  
20 correct?

21 A. Yes, that is what it says.

22 Q. That is Hispanic focus group participants, correct?

23 A. Correct.

24 Q. Now, Dr. Abowd, overall, you would describe this focus  
25 group research as qualitative research, correct?

IBDsNYS4

Abowd - Direct

1 A. That's correct.

2 Q. And all of the CBAMS focus group research that we have  
3 discussed happened in 2017 and '18, correct?

4 A. I think it all happened in 2018.

5 Q. All happened in 2018?

6 A. Yes.

7 Q. OK. You agree, Dr. Abowd, that the CBAMS focus group  
8 research conducted by the Census Bureau suggests a greater  
9 sensitivity to a citizenship question today than there was a  
10 few years ago, correct?

11 A. The CBAMS research, both the focus group and the survey,  
12 have alerted us to what we consider a major difficulty in  
13 fielding the 2020 census to regain the trust of the Hispanic  
14 community, yes.

15 Q. The research suggests that the macro environment today,  
16 which affects the sensitivity of citizenship questions on  
17 Census Bureau surveys, is different than it was a few years  
18 ago, correct, Dr. Abowd?

19 A. So the research that you just showed me doesn't support an  
20 inference of change, so I won't make one.

21 But it does support that it is a major concern now, whether  
22 it is greater or less than it was for the 2010 census. It  
23 wasn't supported by what you said, but it does support that it  
24 is a major concern now.

25 Q. Dr. Abowd, the sensitivity to a citizenship question that's

IBDsNYS4

Abowd - Direct

1 reflected in the 2018 CBAMS research, that degree of  
2 sensitivity would not be captured in the 5.8 percentage point  
3 estimate that is based on data only up through 2016, correct?

4 A. It is -- yes, that is right.

5 Q. Dr. Abowd, you're aware that there are recent news reports  
6 that President Trump is contemplating an executive order that  
7 provide that citizenship will no longer be conferred on all  
8 persons born on United States soil?

9 A. I have read the news reports, yes.

10 Q. Dr. Abowd, you would agree that that is something that  
11 could affect the macro environment around the census, correct?

12 A. Yes.

13 Q. You're aware that on November 2 of this year, the Census  
14 Bureau's National Advisory Committee on racial, ethnic, and  
15 other populations, recommended that the Census Bureau evaluate  
16 and report on the potential effects of such an order on census  
17 operations for 2020, correct?

18 A. So I was called to litigation on the day the  
19 recommendations were read out loud. I assume you're quoting  
20 them right, but I wasn't there, and they haven't been delivered  
21 to my inbox yet.

22 Q. But you're aware of that recommendation, right, Dr. Abowd?

23 A. You just made me aware of it, yes.

24 Q. The Census Bureau has not conducted any analysis that  
25 you're aware of about how the macro environment may have



IBDsNYS4

Abowd - Direct

1 changed in light of that announcement of the executive order  
2 that President Trump is contemplating, correct?

3 A. That's correct.

4 THE COURT: Mr. Ho, would this be a good time to take  
5 our lunch break?

6 MR. HO: Sure.

7 THE COURT: All right. Question. We're technically  
8 on direct, but in some respects, this is more properly viewed  
9 as cross.

10 Does anyone have a view on whether Dr. Abowd should be  
11 permitted to speak with defense counsel during the break?

12 MR. HO: Our view, your Honor, is that he should not  
13 be permitted to because it is like a cross. It is an adverse  
14 direct like a cross-examination, so we think he should be  
15 sequestered from speaking about the substantive subject of the  
16 litigation while he remains on the stand.

17 THE COURT: Mr. Ehrlich, any objection to my so  
18 instructing Dr. Abowd?

19 MR. EHRLICH: No objection, your Honor.

20 THE COURT: Dr. Abowd, because you're on what is  
21 functional equivalent of cross-examination, the rules dictate  
22 that you shouldn't speak with defense counsel concerning the  
23 substance of your testimony.

24 If you have logistical conversation with them or the  
25 like, that is fine, but please don't speak about the substance

IBDsNYS4

Abowd - Direct

1 of your testimony. And if it would be easier not to speak with  
2 them at all, don't speak with them at all.

3 It is 1:01. We'll pick up again at 2:00 p.m.

4 Enjoy your break. Thank you.

5 (Luncheon recess)

IbdWnys5

Abowd - Direct

## AFTERNOON SESSION

2:00 p.m.

THE COURT: You may be seated.

Apologies for a slightly late start. Something came up that I needed to deal with.

We will continue with the direct examination.

Dr. Abowd, I remind you that you are under oath.

Mr. Ho, you may proceed.

MR. HO: Thank you, your Honor.

Q. Dr. Abowd, I just wanted to go back to a couple of exhibits that we talked about before the lunch break briefly before we move on.

MR. HO: I'd like to go back to Plaintiffs' Exhibit 4, which is a portion of the administrative record in this case. This is page 7,913 of this exhibit, AR No. 11634. This is a document in the administrative record that's been admitted into evidence.

Q. Dr. Abowd, is this an earlier draft version of the Brown et al. memo that we were discussing earlier?

A. Yes, it is.

Q. It's dated December 22, 2017?

A. Yes, it is.

Q. And it's in the administrative record in this case?

A. Yes, it is.

Q. And this draft contains earlier versions of the same

IbdWnys5

Abowd - Direct

1 analyses of ACS data, unit nonresponse, item nonresponse, etc.,  
2 that we discussed earlier?

3 A. Contains many of the analyses we discussed earlier, yes.

4 Q. Thank you.

5 I want to talk about, briefly, Plaintiffs' Exhibit 448.  
6 This is a different PowerPoint, one given to the national  
7 advisory committee on racial, ethnic and other populations. Do  
8 you see that, Dr. Abowd?

9 A. Yes, I do.

10 MR. HO: This has been admitted into the record. I'd  
11 like you to look at page 13 of this document, and the third  
12 bullet.

13 Q. That's a quote from an interviewer from the CBAMS work,  
14 right?

15 A. It's a quote from an interviewer during field studies that  
16 the center for survey methods -- survey measurement was  
17 conducting before this report was written.

18 Q. Sorry. My apologies. Thank you for that correction,  
19 Dr. Abowd.

20 The interviewer from the Census Bureau stated: "Three  
21 years ago was so much easier to get respondents compared to now  
22 because of the government changes and trust factors. Three  
23 years ago I didn't have problems with the immigration  
24 questions." Did I read that correctly?

25 A. Yes, you did.

IbdWnys5

Abowd - Direct

1 Q. And that's some qualitative evidence suggesting that  
2 questions related to immigration status asked by the Census  
3 Bureau have a greater sensitivity today than they did a few  
4 years ago, correct?

5 A. Yes, it is.

6 MR. HO: Dr. Abowd, I want to go back to your January  
7 memo to Secretary Ross, Plaintiffs' Exhibit 22, and I want to  
8 ask you about a passage on page 5 under the header B4, cost  
9 estimates.

10 Q. Dr. Abowd, the lower self-response rates resulting from the  
11 addition of a citizenship question to the 2020 census, you  
12 would expect would increase the cost of conducting the 2020  
13 census, correct?

14 A. That's correct.

15 Q. And the reason why that is is that when you have lower  
16 self-response rates, you have to try to enumerate more people  
17 through nonresponse follow-up efforts, or NRFU, correct?

18 A. That's correct.

19 Q. And NRFU costs money, right?

20 A. Yes, it does.

21 Q. Part of the NRFU process includes sending Census Bureau  
22 enumerators in person to nonresponding households, correct?

23 A. That's correct.

24 MR. HO: Let's turn to page 6 of your memo and the  
25 second-to-last paragraph, if we could blow it up.

IbdWnys5

Abowd - Direct

1 Q. This paragraph describes the cost estimates that you  
2 presented in this memo for the estimated cost of including the  
3 citizenship question on the 2020 census, correct?

4 A. That's correct.

5 Q. And in this memo, you estimated that the inclusion of the  
6 question could increase NRFU costs by at least \$27.5 million,  
7 correct?

8 A. Yes, that's correct.

9 MR. HO: And if we could blow up the last paragraph on  
10 this page.

11 Q. Dr. Abowd, as you presented your findings in this memo, you  
12 describe the \$27.5 million estimate as a conservative estimate,  
13 is that correct?

14 A. That's correct.

15 Q. And one reason why it's a conservative estimate is because  
16 the differences in self-response rates to the 2020 census  
17 between citizen and noncitizen households may be even greater  
18 than estimated in this memo, correct?

19 A. That's correct.

20 Q. And so, the memo describes the \$27.5 million cost as a  
21 lower-bound estimate, correct?

22 A. Yes, that's correct.

23 Q. Now, one reason why you describe it as a lower-bound  
24 estimate in your memo is that the estimate assumes that --  
25 well, strike that.

IbdWnys5

Abowd - Direct

1 MR. HO: Let me try that again.

2 Q. One reason why you describe this as a lower-bound estimate  
3 in your memo is that it may take more NRFU visits to enumerate  
4 households that don't respond to the citizenship question than  
5 you assumed in generating the \$27.5 million estimate, correct?

6 A. That's one of the reasons, yes.

7 Q. And another reason is that this lower-bound cost estimate  
8 does not incorporate any estimate about the effect of a  
9 citizenship question on reducing self-response rates from all  
10 citizen households, correct?

11 A. That's correct.

12 Q. And another reason why this estimate is conservative and a  
13 lower-bound estimate is that it does not capture increased  
14 communication campaign costs that may be needed as a result of  
15 the citizenship question, correct?

16 A. That's correct.

17 MR. HO: I want to bring us back to page 1 of the  
18 memo, and I just want to look at the last sentence on page 1.

19 Q. Given everything that we've described, Dr. Abowd, your memo  
20 describes adding a citizenship question to the 2020 census as  
21 very costly, correct?

22 A. Correct.

23 Q. Now, the lower self-response rates resulting from the  
24 addition of the citizenship question will also reduce the  
25 quality of the data resulting from the 2020 census, correct?

IbdWnys5

Abowd - Direct

1 A. That's correct.

2 Q. And one reason for that is that when you get lower  
3 self-response rates, you have to try to enumerate people  
4 through NRFU efforts like proxies, correct?

5 A. That's correct.

6 Q. And generally speaking, when you do nonresponse follow-up,  
7 you don't get answers that are as reliable as when you get  
8 self-responses, correct?

9 A. By the coverage error measures that we use, that's correct,  
10 yes.

11 Q. Your memo, in this same last sentence on the first page,  
12 concludes that adding a citizenship question to the census  
13 would harm the quality of the census count, correct?

14 A. That's correct.

15 Q. And that applies to both alternatives B and option D, which  
16 Secretary Ross ultimately chose, correct?

17 A. That's correct.

18 Q. Dr. Abowd, harming the quality of the census data, that's a  
19 bad thing, right?

20 A. Something we try to avoid, yes.

21 Q. I'd like to ask you about different data quality issue with  
22 respect to the citizenship question. Dr. Abowd, you agree --  
23 I'm sorry.

24 MR. HO: Let me start that again.

25 Q. Dr. Abowd, sometimes it happens that there's disagreement



IbdWnys5

Abowd - Direct

1 between a person's citizenship status as reflected in  
2 administrative records and what that person reports or what's  
3 reported for that person in response to the citizenship  
4 question on the American Community Survey, correct?

5 A. That's correct.

6 Q. So sometimes administrative records indicate that someone  
7 is a noncitizen but the ACS response indicates that that  
8 person's a citizen, right?

9 A. Yes, that's correct.

10 Q. And in your memo, Plaintiffs' Exhibit 22, you describe  
11 citizenship status as reflected in the administrative records  
12 as "verified," correct; that's the term you use?

13 A. Yes, that's the term we use.

14 Q. And the reason you use the term "verified" is because the  
15 person's citizenship status as reflected in administrative  
16 records is based upon a legal document indicating that person's  
17 citizenship status, correct?

18 A. That's correct.

19 Q. Now, by contrast, someone's citizenship status as reported  
20 in response to the ACS citizenship question is based on a  
21 survey response, not a legal document, correct?

22 A. That's correct.

23 Q. And so, you would describe that person's citizenship status  
24 as referred to -- as reported, I'm sorry, in the ACS as  
25 unverified, correct?

IbdWnys5

Abowd - Direct

1 A. Or a survey response, yes.

2 Q. Now, you agree, Dr. Abowd, that if someone is coded in  
3 administrative records as a noncitizen, then it's reasonable to  
4 conclude that that person is, in fact, a noncitizen, correct?

5 A. At the time at which the coding was done, yes.

6 Q. And you believe that when someone's ACS response says that  
7 they are a citizen but the administrative records says that  
8 they're not a citizen, then the most likely conclusion is that  
9 the person is, in fact, a noncitizen, correct?

10 A. The survey response was citizen and the administrative  
11 record response was noncitizen?

12 Q. Yes.

13 A. Correct, insofar as the administrative record is  
14 contemporaneous with the survey response, yes.

15 Q. If all you have is an administrative record and all you  
16 have is a survey response, the administrative record says  
17 noncitizen, survey response says citizen, then you'd agree that  
18 it's more likely than not that that person's a noncitizen,  
19 right?

20 A. That's correct.

21 Q. So, Dr. Abowd, is it correct to say that citizenship status  
22 is one characteristic where you believe that administrative  
23 records tend to be more accurate than survey responses?

24 A. Yes, that's correct.

25 MR. HO: Let's bring back up Plaintiffs' Exhibit 22,

IbdWnys5

Abowd - Direct

1 your January memo, page 8. I want to look at the second full  
2 paragraph.

3 Q. Now, according to your memo, in the 2016 ACS, individuals  
4 whom the administrative records indicate are noncitizens  
5 responded "citizen" 34.7 percent of the time on the ACS  
6 citizenship question, correct?

7 A. Did you say 2016; that's the number you read?

8 Q. Yes.

9 A. Yes.

10 Q. And overall, in the Census Bureau's research on this issue,  
11 you've determined that for people for whom the administrative  
12 records indicate that they're noncitizens, there's disagreement  
13 between the administrative record and the ACS survey response  
14 between 30 to 37 percent of the time, correct?

15 A. That's correct.

16 Q. And you'd agree, then, given what we discussed earlier,  
17 that it's likely that for more than 30 percent of noncitizens  
18 who provide a response to the ACS citizenship question, the  
19 response is incorrect, right?

20 A. Response is in disagreement with the administrative record  
21 and probably incorrect.

22 Q. Now, the Census Bureau has no empirical basis to believe  
23 that noncitizens for whom a response is provided to a  
24 citizenship question on the census will have more accurate  
25 responses than they do to the citizenship question on the ACS,

IbdWnys5

Abowd - Direct

1 correct?

2 A. That's correct.

3 Q. And in fact, Dr. Abowd, the Census Bureau believes that  
4 there are definitely indications that responses by noncitizens  
5 to a citizenship question on the 2020 census will be even less  
6 accurate than they have historically been on the ACS, correct?

7 A. That's correct.

8 Q. The Census Bureau still hasn't made any determination about  
9 how it will address disagreement between survey responses and  
10 the administrative records when producing block-level CVAP data  
11 for the Department of Justice after the 2020 census, correct?

12 A. For a public-use tabulation that will be used by the  
13 Department of Justice, that's correct.

14 Q. Now, alternative C, Dr. Abowd, is to use administrative  
15 data and no citizenship question to collect citizenship data  
16 and then to rely principally on that administrative data to  
17 produce block-level CVAP data for the Department of Justice,  
18 correct?

19 A. That's correct.

20 Q. And under alternative C, you would take responses to the  
21 census questionnaire and then link those responses to  
22 administrative data with citizenship information in it,  
23 correct?

24 A. That's correct.

25 Q. And the particular administrative records that you would

IbdWnys5

Abowd - Direct

1 use under alternative C are the social security numerical  
2 identification system, or NumIdent, data, correct?

3 A. I've never heard the acronym expanded, but yes, NumIdent is  
4 the correct file.

5 MR. HO: Let's bring your memo back up, Plaintiffs'  
6 Exhibit 22. I want to look at the first page, the last  
7 paragraph, second sentence.

8 Q. Dr. Abowd, the conclusion that you reached in your memo is  
9 that unlike including a citizenship question, using  
10 administrative records to provide DOJ with block-level CVAP  
11 data would not harm the quality of the census count, correct?

12 A. As long as it's done without simultaneously asking the  
13 question on the census, yes.

14 Q. And if you just used the administrative records, you didn't  
15 ask the citizenship question, under alternative C, you would  
16 have to deal with a problem of survey responses and  
17 administrative records that disagree, correct?

18 A. Correct.

19 Q. And so, the Census Bureau concluded that using  
20 administrative records would deliver higher quality block-level  
21 CVAP data by race and ethnicity than including a citizenship  
22 question on the census, correct?

23 A. Yes.

24 Q. The Census Bureau's proposal to generate such block-level  
25 CVAP data using administrative records rather than a

IbdWnys5

Abowd - Direct

1 citizenship question had the backing of the Census Bureau's  
2 redistricting office, correct?

3 A. Yes, it did.

4 Q. Now, this memo also concludes that using administrative  
5 records would be far less costly than including a citizenship  
6 question on the 2020 census, correct?

7 A. That's correct.

8 Q. And part of the reason is that if you use administrative  
9 records but you don't include a citizenship question on the  
10 census, you don't have increased NRFU costs, correct?

11 A. That's correct.

12 Q. And the conclusion of the Census Bureau that was reached in  
13 this memo is that using administrative records and not  
14 including a citizenship question on the census would best meet  
15 DOJ's stated uses, correct?

16 A. That's correct.

17 Q. And you communicated that conclusion to Secretary Ross  
18 during your meeting with him on February 12, 2018, correct?

19 A. Yes, we did.

20 Q. Now, the Census Bureau, during this period of time, also  
21 offered to meet with the Department of Justice to discuss its  
22 recommendations, correct?

23 A. That's correct.

24 Q. The analyses that we've been discussing, those began after  
25 Arthur Gary -- or after a letter signed by Arthur Gary from the

IbdWnys5

Abowd - Direct

1 Department of Justice was sent to the Census Bureau requesting  
2 a citizenship question on December 12, correct?

3 A. We got it on December 15, but that's correct, yes.

4 Q. And you're aware that Acting Census Bureau Director Ron  
5 Jarmin subsequently wrote an email to Arthur Gary, correct?

6 A. Yes, I'm aware of that email.

7 MR. HO: OK. Let's bring up Plaintiffs' Exhibit 109.  
8 This is in the administrative record and has been admitted into  
9 evidence.

10 Q. Dr. Abowd, this is the email that we discussed from Acting  
11 Census Bureau Director Ron Jarmin to Arthur Gary at the  
12 Department of Justice, correct?

13 A. That's correct.

14 Q. And the top email on this thread is Acting Director Jarmin  
15 forwarding to you and someone else the email that he had  
16 written to Arthur Gary, correct?

17 A. That's correct.

18 MR. HO: Let's look at the email that Acting Director  
19 Jarmin forwarded to you, the one that he wrote to Mr. Gary.  
20 Acting Director Jarmin wrote to Mr. Gary on December 22:

21 "Thank you for your letter dated 12/12/2017 regarding  
22 improving the quality of citizenship information for DOJ  
23 enforcement of the Voting Rights Act. Let me start by saying  
24 the bureau is fully supportive of providing DOJ with the  
25 highest quality statistical information possible. To that end

IbdWnys5

Abowd - Direct

1 I've directed staff to review all possible ways to address the  
2 means expressed in the letter."

3 Q. Did I read that correctly?

4 A. Yes, you did.

5 Q. Dr. Abowd, when Acting Director Jarmin wrote this email,  
6 you understand him to be making -- you understand him to be  
7 referring to the analysis that you were working on with the  
8 SWAT team, correct?

9 A. That's correct.

10 Q. This email, dated February 22, 2017, that's the same date  
11 as the draft version of the Brown et al. memo in the  
12 administrative record that we talked about, beginning after the  
13 lunch break, correct?

14 A. That's correct.

15 MR. HO: Now, the next two sentences of Acting  
16 Director Jarmin's email to Mr. Gary read:

17 "They have now briefed me and their findings suggest  
18 that the best way to provide PL 94 block level data with  
19 citizen voting population by race and ethnicity would be  
20 through utilizing a linked file of administrative and survey  
21 data the Census Bureau already possesses. This would result in  
22 higher quality data produced at lower cost."

23 Q. Did I read that right?

24 A. Yes, you did.

25 Q. When Acting Director Jarmin referred to a linked file of



IbdWnys5

Abowd - Direct

1 administrative and survey data, your understanding is that's a  
2 reference to alternative C in your memo, creating a citizenship  
3 voting-age population table using administrative records,  
4 right?

5 A. It is a reference to alternative C, but I believe he  
6 intended to also discuss with them whether they would like us  
7 to do it enhancing the American Community Survey or with some  
8 other survey basis.

9 Q. And in his email to Mr. Gary, Acting Director Jarmin  
10 referred to this as the "best way" to provide block-level CVAP  
11 data to DOJ, correct?

12 A. That's correct.

13 Q. And Acting Director Jarmin, in his email to the Department  
14 of Justice, referred to this option of using administrative  
15 records as producing "higher quality data produced at lowest  
16 cost," right?

17 A. That's correct.

18 Q. The last sentence of Acting Director Jarmin's email to Mr.  
19 Gary at the Department of Justice says, "I suggest we schedule  
20 a meeting of census and DOJ technical experts to discuss the  
21 details of this proposal."

22 You're aware that a meeting was tentatively scheduled  
23 between Mr. Gary and Acting Director Jarmin for mid-January,  
24 right, Dr. Abowd?

25 A. I'm aware from the administrative record, yes.

IbdWnys5

Abowd - Direct

1 Q. And you're aware that that meeting never took place,  
2 correct?

3 A. That meeting never took place, that's correct.

4 Q. And in fact, Dr. Abowd, the Department of Justice refused  
5 to take the meeting referenced here in this email for the  
6 purpose of discussing the Census Bureau's proposal to produce  
7 higher quality CVAP data at lower cost than adding a  
8 citizenship question to the census, correct?

9 A. I don't know personally that the Department of Justice  
10 refused. I've read in the administrative record the same  
11 things that you have; it never happened.

12 Q. And the reason it never happened is because DOJ leadership  
13 didn't want that meeting to take place, right, Dr. Abowd?

14 MR. EHRLICH: Objection.

15 THE COURT: Sustained.

16 Q. Your understanding is that DOJ leadership didn't want that  
17 meeting to take place, right, Dr. Abowd?

18 A. That is my understanding, yes.

19 Q. Dr. Abowd, I'd like to show you some deposition testimony  
20 that has been designated as evidence in this case and ask you  
21 about your knowledge of it.

22 MR. HO: With the Court's permission, your Honor, we'd  
23 like to play a very short clip of acting -- Assistant Attorney  
24 General John Gore's deposition designations, which have been  
25 filed with the Court, which have been lodged with the Court and

IbdWnys5

Abowd - Direct

1 filed publicly.

2 THE COURT: Any objection?

3 MR. EHRLICH: We don't see any need to do that, your  
4 Honor. He can ask Dr. Abowd his opinion and Dr. Abowd can give  
5 his opinion. I'm not sure why we need to watch a video clip,  
6 which your Honor said you would watch on your own time.

7 THE COURT: And I've already watched on my own time,  
8 but that being said, I'll let Mr. Ho engage in his examination  
9 the way he would like if there's no basis to object.

10 You may proceed.

11 MR. HO: Thank you, your Honor. The clip is very  
12 short. It's from page 274 of Mr. Gore's deposition. The lines  
13 have been designated lines 5 through 9, and we'll try to play  
14 it now.

15 (Video played)

16 BY MR. HO:

17 Q. Dr. Abowd, at the time the bureau was informed that the  
18 Department of Justice did not want to meet to discuss the  
19 Census Bureau's proposal for higher quality CVAP data at the  
20 lower cost, were you aware that the attorney general personally  
21 made that decision?

22 A. I was not.

23 Q. When did you become aware of that?

24 A. When the administrative record revealed it.

25 Q. Have you ever heard of another circumstance in which the

IbdWnys5

Abowd - Direct

1 attorney general personally directed staff at the Department of  
2 Justice not to meet with the Census Bureau to discuss a  
3 proposal for higher quality data that the Department of Justice  
4 requested?

5 A. I have not, no.

6 Q. Are you aware of any other circumstance in which a cabinet  
7 secretary personally directed agency staff not to meet with the  
8 Census Bureau?

9 A. I'm not aware of any circumstances, no.

10 Q. Dr. Abowd, in your experience, is it unusual for the Census  
11 Bureau to receive a data request from an agency and then for  
12 that agency to refuse to meet with the Census Bureau to discuss  
13 the technical aspects of that data request?

14 A. Yes, it is.

15 Q. Now, sometime, Dr. Abowd, after your meeting with Secretary  
16 Ross on February 12, you were asked to consider a fourth  
17 alternative, which we've been referring to as option D or  
18 alternative D. Is that correct?

19 A. That's correct.

20 Q. Just so we're clear, alternative D combines both  
21 alternatives B and C; that is, you both add a citizenship  
22 question to the census and you look at administrative records  
23 on citizenship under alternative D, correct?

24 A. That's correct.

25 Q. And your understanding was that after that February 12

IbdWnys5

Abowd - Direct

1 meeting, Secretary Ross and Undersecretary Kelley wanted you to  
2 work on alternative D, correct?

3 A. To evaluate it, yes, that's correct.

4 Q. And Acting Director Jarmin told you that, right?

5 A. Yes, he did.

6 MR. HO: I want to look at Plaintiffs' Exhibit 25.  
7 This is admitted into the trial record as a part of the  
8 administrative record.

9 Q. Dr. Abowd, this is a memo under your name assessing  
10 alternative D, correct?

11 A. That's correct.

12 I want to note the watermark isn't on this page again, but  
13 it is the administrative record.

14 Q. I think it has something to do with the screen. I  
15 apologize for that.

16 But this is the version, 1.0, of the draft memo that you  
17 prepared at the request of Acting Director Jarmin on the  
18 subject of alternative D, right, Dr. Abowd?

19 A. That's correct.

20 Q. And it was directed through Acting Director Jarmin to the  
21 undersecretary and to the secretary of commerce, correct?

22 A. That's correct.

23 Q. And the views expressed in this memo are those of the  
24 senior executive staff at the Census Bureau, correct?

25 A. That's correct.

IbdWnys5

Abowd - Direct

1 Q. And you're not aware of any subsequent versions of this  
2 memo, correct?

3 A. I am not.

4 MR. HO: Let's turn to page 5 of this memo, which is  
5 administrative record page 1312.

6 Q. The final paragraph sets forth the conclusion of the Census  
7 Bureau about alternative D in comparison to alternative C,  
8 correct?

9 A. Yes, it does.

10 Q. And you concluded that alternative D would result in poorer  
11 quality citizenship data than alternative C; it would still  
12 have all the negative cost and quality implications of  
13 alternative B outlined in the draft January 19, 2018, memo to  
14 the Department of Commerce, correct?

15 A. That's correct.

16 Q. And so, the Census Bureau did not recommend alternative D,  
17 correct?

18 A. That was also correct.

19 Q. And the Census Bureau still does not recommend alternative  
20 D, correct?

21 A. That's correct.

22 Q. But Secretary Ross selected alternative D anyway, correct?

23 A. The secretary instructed us to do alternative D, that's  
24 correct.

25 MR. HO: Now, I want to ask you about overall census

IbdWnys5

Abowd - Direct

1 data quality under C and D. And let's look at page 4 of this  
2 memo, the last full paragraph. I want to highlight the third  
3 sentence, beginning with "however," about five lines down.

4 Q. Now, your March memo here notes that because alternative D  
5 involves adding a citizenship question to the census, the  
6 Census Bureau expects to see the same reduction in  
7 self-response rates that you would see under alternative B,  
8 correct?

9 A. That's correct.

10 MR. HO: I want to ask you about the next sentence,  
11 starting with "not only."

12 Q. Your memo notes that the reduction in response rates, under  
13 alternative D, would lead to more enumerations through the NRFU  
14 process and more incorrect enumerations than you'd have under  
15 alternative C, correct?

16 A. Yes.

17 MR. HO: And then let's highlight the next sentence,  
18 starting with "in the 2010 decennial census."

19 Q. The memo notes that the increased number of enumerations  
20 through the NRFU process under alternative D will produce lower  
21 quality personal data on the census responses as compared to  
22 alternative C, correct?

23 A. That's correct.

24 Q. So if your goal is to have an accurate census, then  
25 alternative C is superior to alternative D, correct?

IbdWnys5

Abowd - Direct

1 A. That's correct.

2 Q. Now, under alternative D, due to the lower quality personal  
3 data on census responses from increased number of households  
4 going through NRFU, there will also be a reduction in the  
5 number of individuals whom the Census Bureau can link to  
6 administrative records, correct?

7 A. Yes. I thought that's what we were talking about, but yes,  
8 that's correct.

9 Q. OK. Well, if we look at this, here, if we look at the last  
10 sentence here, for the 2010 census, you're able to link 93  
11 percent of self-responses to administrative records, correct?

12 A. Yes.

13 Q. But for proxy responses obtained through the NRFU process,  
14 you're only able to link 33.8 percent of such individuals  
15 through administrative records, correct?

16 A. That's correct.

17 Q. So just to be clear, under alternative D, there are going  
18 to be fewer people that you can link to administrative records  
19 than if you had -- if the secretary had instead chosen  
20 alternative C, correct?

21 A. That's correct.

22 I said yes. I must be getting -- I'm sorry. Yes, that's  
23 correct.

24 Q. OK.

25 MR. HO: Now, let's turn back to Secretary Ross's



IbdWnys5

Abowd - Direct

1 decision memo, Plaintiffs' Exhibit 26, and I want to look at  
2 page 5 of the memo, the first paragraph on page 5.

3 Q. The secretary's discussing alternative D in this paragraph,  
4 correct?

5 A. Yes, he is.

6 MR. HO: And I want to ask you about the third  
7 sentence in this paragraph, starting with "this may eliminate."  
8 I want to ask you about what Secretary Ross is referring to  
9 here.

10 Q. One limitation of alternative C, using administrative  
11 records, Dr. Abowd, is that not every person who is enumerated  
12 in the census can be linked to administrative records, correct?

13 A. That's correct.

14 Q. So if you rely on administrative records -- excuse me,  
15 under alternative C, to produce block-level CVAP data for DOJ,  
16 there's a portion of the population for whom you're going to  
17 have to impute, or model, their citizenship status, correct?

18 A. I prefer model, but yes, that's correct.

19 Q. The secretary's decision memo suggests that under  
20 alternative D, that might eliminate the need for such modeling  
21 of citizenship status for people who cannot be matched to  
22 administrative records, right?

23 A. That's what he says, yes.

24 Q. Dr. Abowd, you analyzed the question of whether alternative  
25 D could potentially address this gap in the administrative

IbdWnys5

Abowd - Direct

1 records, right?

2 A. Yes, we did.

3 MR. HO: All right. Let's bring your memo back up,  
4 from March, Plaintiffs' Exhibit 25. Let's look at page 4.

5 Q. And under the header "can survey data address the gaps in  
6 alternative C," this is the section where you address this  
7 issue that Secretary Ross is talking about in his memo that we  
8 talked about a moment ago, whether or not alternative D can  
9 effectively address that gap in the administrative records,  
10 right?

11 A. There may have been other paragraphs, but it's certainly  
12 discussed in this one as well.

13 Q. Now, under alternative D, if you get a survey response on  
14 citizenship status for someone who can't be matched to the  
15 administrative records, you're going to use that survey  
16 response, right?

17 A. We're going to include that survey response in the record  
18 of the 2020 census, yes.

19 Q. Right. I mean, you wouldn't, if you -- for this group of  
20 people who can't be matched to administrative data but you get  
21 a survey response, you wouldn't model their citizenship status;  
22 you would take the survey response as to citizenship for that  
23 person, right?

24 A. As I think I've explained in several depositions, we've  
25 charged a high-level expert panel that I'm the chair of inside

IbdWnys5

Abowd - Direct

1 the Census Bureau to develop a scientific answer to the  
2 question you just asked. In the presence of a dual set of  
3 records on citizenship status, it isn't obvious what the best  
4 way to translate that into an estimate of citizen voting-age  
5 population is.

6 Q. I apologize, Dr. Abowd. My question was probably  
7 confusingly worded. I wasn't talking about people for 94 whom  
8 there are dual records. I mean people who can't be linked to  
9 the administrative record but for whom you do have a survey  
10 response as to their citizenship status. You're going to use  
11 the citizenship response for that person rather than  
12 modeling -- you're going to use the survey response for that  
13 person rather than modeling their citizenship status, correct?

14 A. I suspect that the internal expert panel will draw that  
15 conclusion, but I want to say, once again, it is unusual to  
16 dual source this, and it's not necessarily the best scientific  
17 answer that you always use the survey if you don't have an  
18 administrative record or that you always use the administrative  
19 record when you don't have a survey. The modeled answer can be  
20 defended on objective ground, but we haven't developed it yet.

21 Q. There's currently no objective grounds on which if all you  
22 have about a person's citizenship status is their survey  
23 response for you to reject the survey response, correct,

24 Dr. Abowd?

25 A. That's correct.

IbdWnys5

Abowd - Direct

1 Q. Now, as we established earlier, though, Dr. Abowd, the  
2 Census Bureau believes that noncitizens give an answer to the  
3 citizenship question on the ACS that's probably wrong more than  
4 30 percent of the time, right?

5 A. That disagrees with the administrative record more than 30  
6 percent of the time, yes.

7 Q. And you noted in this March memo that a problem with  
8 relying on the citizenship question to fill gaps in the  
9 administrative record is that people who are not citizens have  
10 a strong incentive to provide an incorrect answer to a  
11 citizenship question if they answer at all, right?

12 A. That's correct.

13 Q. And the memo notes that even a large fraction of legal  
14 permanent residents provide incorrect answer, survey responses  
15 to the citizenship question on the ACS, correct?

16 A. That's correct.

17 Q. And so, a key difference between alternatives C and D is  
18 for this population of people for whom you can't link to  
19 administrative records, under alternative C, you model their  
20 citizenship status and, under alternative D, if you get it, you  
21 try to use the survey self-response, right?

22 A. I think that's a fair characterization, yes.

23 Q. But given the errors in survey responses to citizenship  
24 questions that we discussed earlier, this memo, Dr. Abowd,  
25 concludes that survey-collected citizenship data may not be

IbdWnys5

Abowd - Direct

1 reliable for many of the people falling in the gaps in the  
2 administrative record, correct?

3 A. Correct.

4 MR. HO: And let's look at page 4 of your memo.

5 Q. The second-to-last sentence in the last paragraph, starting  
6 with "this suggests," that's where you made that conclusion in  
7 this memo, right, Dr. Abowd?

8 A. That's correct.

9 MR. HO: Let's turn to page 5 of the memo and look at  
10 the first sentence, full sentence, starting with "thus, not  
11 only are citizenship data."

12 Q. Your March memo to Secretary Ross, Dr. Abowd, states that  
13 citizenship survey data gathered under alternative D, it  
14 describes such data as being of "suspect quality," correct?

15 A. Correct.

16 Q. But the memo --

17 MR. HO: Let's flip back to page 4 of the memo, and  
18 the second paragraph, the first sentence.

19 Q. The memo describes the administrative data on citizenship  
20 as "high quality," correct?

21 A. Correct.

22 Q. Dr. Abowd, there's no reason to think, for the group of  
23 people that you can't match to administrative records, that on  
24 average the survey responses under alternative D would be more  
25 accurate than the modeling that you would conduct under

IbdWnys5

Abowd - Direct

1 alternative C, right?

2 A. That's correct.

3 Q. And in fact, Dr. Abowd, for this group of people falling in  
4 the gaps of the administrative records, your view is that the  
5 modeled responses to citizenship status under alternative C  
6 would be more likely to be accurate than the survey  
7 self-responses to a citizenship question under alternative D,  
8 correct?

9 A. That's correct.

10 Q. So, Dr. Abowd, for this group of people who can't be  
11 matched to administrative records, the Census Bureau's view is  
12 that the modeled responses to citizenship status under  
13 alternative C would be more likely to be accurate than the  
14 survey self-responses to a citizenship question under  
15 alternative D, correct?

16 A. That's correct.

17 Q. And as we established earlier, Dr. Abowd, the number of  
18 individuals you can't match at all to administrative records,  
19 that's going to be higher under alternative D than under  
20 alternative C, right?

21 A. Also correct.

22 Q. So for people who can't be linked to administrative  
23 records, if you're attempting to determine their citizenship  
24 status, Dr. Abowd, you would prefer modeling it to a survey  
25 self-response, right?

IbdWnys5

Abowd - Direct

1 A. A little too compound. Could you ask it --

2 Q. Sure.

3 A. -- straightforwardly.

4 Thank you.

5 Q. If you want to get accurate citizenship information about  
6 people who fall in the gaps of the administrative records, Dr.  
7 Abowd, your recommendation would be to model their citizenship  
8 status rather than to try to collect it through a survey  
9 self-response, correct?

10 A. That's correct.

11 Q. And Dr. Abowd, if the Department of Justice's goal is to  
12 get accurate block-level CVAP data, then for this group of  
13 people who fall in the gaps of the administrative records, the  
14 best course of action is to use -- is to impute their  
15 citizenship status rather than use a survey question, correct?

16 A. Most accurate data would come from modeling their  
17 citizenship status, that's correct.

18 MR. HO: OK. Now let's turn back to Secretary Ross's  
19 decision memo, page 5. I want to look at the first paragraph  
20 and the last two sentences that start with "finally."

21 Q. I'd like you to read that to yourself and then, when you're  
22 ready, let me know.

23 A. I'm ready.

24 Q. In these two sentences in this paragraph, Dr. Abowd, is it  
25 your understanding that Secretary Ross is suggesting that

IbdWnys5

Abowd - Direct

1 including a citizenship question on the 2020 census will enable  
2 the Census Bureau to model citizenship status more accurately  
3 by determining the accurate ratio of citizen to noncitizen  
4 responses?

5 A. So, once again, the secretary did not discuss this with me  
6 so I don't know exactly what nuances he meant. He appears to  
7 believe that we would get more accurate CVAP data if we had  
8 access to both the survey responses and the administrative  
9 data, yes.

10 Q. And the assertions in this, these two sentences of this  
11 paragraph, Dr. Abowd, the commerce department never discussed  
12 this with the chief scientist at the Census Bureau, right?

13 A. It was not discussed with me, that's right.

14 Q. Dr. Abowd, the two sentences here, they make technical  
15 presumptions that the Census Bureau does not currently endorse,  
16 correct?

17 A. Once again, I'm not privy to the technical assumptions.  
18 They appear to say that the secretary believes it would be more  
19 accurate if we had access to both the survey responses and the  
20 administrative data.

21 Q. That assertion, as you understand it, Dr. Abowd, makes  
22 technical presumptions that the Census Bureau would not  
23 currently endorse, correct?

24 A. That's correct.

25 Q. And as of March 26, 2018, when Secretary Ross issued this



IbdWnys5

Abowd - Direct

1 memo, the Census Bureau had not completed any analysis as to  
2 whether or not the inclusion of a citizenship question would  
3 better -- would enable the Census Bureau to more accurately  
4 model citizenship status for people falling in the gaps of the  
5 administrative records, correct?

6 A. We hadn't done any of that modeling at that time, that's  
7 correct.

8 MR. HO: I want to ask you about another memo of yours  
9 that's in the administrative record, Plaintiffs' Exhibit 24.  
10 This is in the administrative record and has been admitted into  
11 the trial record.

12 Q. You recognize this memo, right, Dr. Abowd?

13 A. Yes, I do.

14 Q. It's a memo that quantifies, under one set of assumptions,  
15 some of the data quality differences between alternatives C and  
16 D, right?

17 A. Yes.

18 MR. HO: Let's turn to page 3 of the memo and figure  
19 1.

20 Q. Now, this is a breakdown of the Census Bureau's analysis of  
21 data quality under alternative C, right?

22 A. Yes, it is.

23 Q. So at the time of this analysis, the bureau posited that  
24 under alternative C, you could link 295 million out of the 330  
25 million people whom you expect to enumerate during the 2020

IbdWnys5

Abowd - Direct

1 census to administrative records containing citizenship, right?

2 A. Yes.

3 Q. That's about 89.4 percent of the population; sound right?

4 A. That does sound right, yes.

5 Q. According to this analysis, there's about 35 million people  
6 whom you'd expect not to be able to link to administrative  
7 records, right?

8 A. That's correct.

9 Q. That's about 10.6 percent of the population that would fall  
10 into that gap of the administrative records that we've been  
11 discussing, right?

12 A. That's correct.

13 Q. So under alternative C you would model citizenship status  
14 for this about 10 percent of the population, right?

15 A. That's correct.

16 MR. HO: Let's turn to the next page, page 4 of the  
17 memo, figure 2.

18 Q. Now, this is a breakdown of data quality under alternative  
19 D, correct?

20 A. Yes, it is.

21 Q. Little more complicated than alternative C, right?

22 A. It has more boxes, yes.

23 MR. HO: All right. Let's walk through this.

24 Q. On the right side of this chart, the bureau posited that  
25 there would be 35.4 million people for whom you would not get a

IbdWnys5

Abowd - Direct

1 response to the citizenship question on the 2020 census, right?

2 A. Yes.

3 Q. And if we look at the far left-hand side of the chart, the  
4 bureau posits that there are 263 million people who you would  
5 get a response to the citizenship question and whom you could  
6 link to administrative records, and the administrative record  
7 and the citizenship response would be the same, right?

8 A. You're on the far left, right?

9 Q. Yes.

10 A. 263 million?

11 Q. Yes.

12 A. Yes, that's right.

13 Q. So if we add these two groups together, 263 million, where  
14 the question response and the administrative records are the  
15 same, and 35.4 million people for whom you don't get an answer  
16 to the citizenship question at all, that group together,  
17 collectively, putting a citizenship question on the census  
18 doesn't give us any better information than if we had no  
19 citizenship question on the census, right?

20 A. Yes, that's right.

21 Q. OK. So if we add them together, that's 298.4 million  
22 people for whom the citizenship question doesn't give us better  
23 information about their citizenship status?

24 A. That's correct.

25 Q. That's 90.4 percent of the population, right?

IbdWnys5

Abowd - Direct

1 A. You've been doing well on the ratios, so I assume you did  
2 that one right too. Thank you.

3 Q. OK. Now let's talk about the rest of the population. You  
4 have, in the middle branch of this chart, 22.2 million people,  
5 under alternative D, who you'd expect to give a response to the  
6 citizenship question and who couldn't be linked to an  
7 administrative record on citizenship, right?

8 A. That's correct.

9 Q. And you also have, on the far right-hand side here, 13.8  
10 million people who have no response to a citizenship question  
11 and no administrative record on citizenship, right?

12 A. That's correct.

13 Q. So you add those two numbers together, that's 36 million  
14 people, under alternative D, who can't be linked to  
15 administrative records on citizenship, right?

16 A. Yes.

17 Q. Now, that's more people who can't be linked to  
18 administrative records than you had under alternative C, right?

19 A. That is correct.

20 Q. That's because of the reduction in data quality because of  
21 more NRFU under alternative D, right?

22 A. That's correct.

23 Q. And that's one of the manifestations in which alternative D  
24 produces worse data than alternative C, right?

25 A. Yes, that's right.

IbdWnys5

Abowd - Direct

1 Q. OK. Let's look again at the chart and the sort of middle  
2 subbranch of the left branch of the chart, the 9.5 million.

3 Under alternative D, the Census Bureau posited you'd have  
4 9-1/2 million people for whom the survey self-response on  
5 citizenship and the administrative record disagree, right?

6 A. That's right.

7 Q. And you don't have any plan for what you would do with  
8 those people right now, right?

9 A. That we'd have to study, yes.

10 Q. And the traditional Census Bureau practice is that if you  
11 have a survey response that conflicts with an administrative  
12 record, you generally rely on the survey response, right?

13 A. So, I hope that I didn't say so unambiguously in any of the  
14 depositions that there was a general practice here. I thought  
15 I said that this was a pretty unusual situation and that's why  
16 we are going to study it further. We don't generally put  
17 ourselves in the situation where we have a disagreement and --  
18 we try to address the disagreements in the design of the data  
19 product.

20 Q. Dr. Abowd, I want to bring you back to your October 5  
21 deposition, your third deposition in this case.

22 A. OK.

23 Q. And specifically page 416, line 15:

24 "Q. Now, the traditional Census Bureau practice, in general,  
25 is that if you have a survey response that conflicted with an

IbdWnys5

Abowd - Direct

1 administrative record, you generally rely on the survey  
2 response, correct?

3 "A. Correct."

4 Was that my question for you and your answer that day?

5 A. Yes, it was.

6 MR. HO: OK. Can we come back to the chart from the  
7 memo, figure 2.

8 Q. Dr. Abowd, for that group of people, the 9-1/2 million  
9 people for whom the survey response and the administrative  
10 record conflict, if you use what you described in your 30(b)(6)  
11 deposition as the traditional Census Bureau practice of relying  
12 on the survey response instead of the administrative record,  
13 you agree that that would probably be more accurate -- more  
14 inaccurate, excuse me, than relying on the administrative  
15 record, correct?

16 A. Yes, I do.

17 (Continued on next page)

IBDsNYS6

Abowd - Direct

1 BY MR. HO:

2 Q. But if you relied on the administrative record instead of  
3 a survey response, there would have been no reason to ask a  
4 survey question in the first place, right?

5 A. That's correct.

6 Q. Now, to be clear, this problem doesn't exist under the  
7 alternative C, right?

8 A. Also correct.

9 Q. Lets come back to this chart.

10 Now I asked you a while ago about the 22.2 million people  
11 who fall in that gap, can't be linked to administrative  
12 records, but from whom you anticipate getting a response to the  
13 citizenship question.

14 That's an accurate characterization of the 22.2, right?

15 A. Not linked?

16 Yes, that's correct.

17 Q. That is about 6.7 percent of the population that can't be  
18 linked to administrative records, but under alternative D, you  
19 have a survey response, right?

20 A. That's correct.

21 Q. Now, under alternative C, you would expect to be able to  
22 link some of these people to administrative records, right,  
23 Dr. Abowd?

24 A. Yes, that's correct.

25 Q. But leave that aside.

IBDsNYS6

Abowd - Direct

1 For this group of 22.2 million people under alternative D,  
2 if you follow traditional Census Bureau practices, you would  
3 use the survey response rather than modeling their citizenship  
4 status, right?

5 A. That's correct.

6 Q. And in your opinion, that would be less accurate than if  
7 you just went with modeling their citizenship status, right?

8 A. That's correct.

9 Q. Dr. Abowd, if someone argued that alternative D was  
10 justified because alternative C requires modeling citizenship  
11 status for people who can't be linked to administrative  
12 records, you would disagree with that conclusion, right?

13 A. I would like you to ask it again. If you could just read  
14 it back, if you want. I want to make sure I heard the  
15 qualifying statements exactly.

16 Q. Dr. Abowd, if someone argued to you that alternative C  
17 is -- excuse me -- I'll try that again.

18 Dr. Abowd, if someone argued to you that alternative D is  
19 justified because under alternative C, you would have to model  
20 the citizenship status for this pool of people who can't be  
21 linked to administrative records, you would disagree with that  
22 conclusion, right?

23 A. Yes, I would.

24 Q. And the Census Bureau would disagree with that argument,  
25 right?



IBDsNYS6

Abowd - Direct

1 A. Yes.

2 Q. Now, this chart, Dr. Abowd, there is a version of this --  
3 excuse me -- there are multiple versions of this in the Brown  
4 memo, right?

5 A. That's correct.

6 Q. I just want to identify them so that the court is aware of  
7 where they are.

8 If we can turn back to Plaintiffs' Exhibit 162, and  
9 page 50 of the paper.

10 Starting on page 50 through pages 53, you go through four  
11 possible scenarios for data quality under alternative D, is  
12 that right?

13 And can we scroll through those, please.

14 A. Yes, that's correct.

15 Q. These scenarios all are constructed under different  
16 assumptions, right, Dr. Abowd?

17 A. Yes, that's correct.

18 Q. And after conducting all of these scenarios, the conclusion  
19 of the Census Bureau remains that alternative D produces worse  
20 data quality than alternative C, correct?

21 A. That's correct.

22 THE COURT: Did you explain what AD REC means?

23 Did I miss that?

24 THE WITNESS: I did not, your Honor. It is a  
25 shorthand for administrative record, ad. rec.

IBDsNYS6

Abowd - Direct

1 THE COURT: Thank you.

2 BY MR. HO:

3 Q. Lets go back to the Ross memo, Plaintiffs' Exhibit 26. I  
4 want to look at page five.

5 I think that's the Brown memo. The Ross memo, Plaintiffs'  
6 Exhibit 26.

7 The first three sentences of the first paragraph. I want  
8 to compare this, if we can, to your March memo, Plaintiffs'  
9 Exhibit 25, page five of your memo, the second to last  
10 paragraph.

11 So Secretary Ross orders option D, but your conclusion  
12 before he made that decision was that including a citizenship  
13 question on the 2020 census does not solve the problem of  
14 incomplete person linkages when producing citizenship  
15 statistics after 2020, correct?

16 A. I confess that I've gotten the providence of boxes  
17 confused.

18 Q. Sure.

19 The one on the bottom, that has your conclusion that  
20 including a citizenship question in the 2020 census does not  
21 solve the problem of incomplete citizenship linkages when  
22 producing citizenship statistics?

23 A. From the March 1 memo?

24 Q. Yes.

25 A. OK. Yes.

IBDsNYS6

Abowd - Direct

1 Q. That's correct, Dr. Abowd?

2 A. Yes, that's correct.

3 Q. When Secretary Ross in his decision memo wrote that  
4 alternative D may eliminate the need for the Census Bureau to  
5 have to model citizenship status for millions of people, you  
6 had already concluded, in fact, that alternative D did not  
7 solve that problem, right?

8 A. That's correct.

9 Q. And you also concluded in this memo that alternative C is  
10 cheaper than alternative D, right?

11 A. That's correct.

12 Q. And you also concluded that using administrative records  
13 alone would be more accurate than attempting to combine  
14 administrative records and survey responses under alternative  
15 D, right?

16 A. That's correct.

17 Q. And you communicated all of that to Secretary Ross through  
18 your memo before his decision memo was issued, correct?

19 A. That's correct.

20 Q. I want to bring up Plaintiffs' Exhibit 359. This has been  
21 admitted into the trial record.

22 Dr. Abowd, you're familiar with this, right?

23 A. Yes. It's statistical policy directive number two.

24 Q. From the Office of Management and Budget, correct?

25 A. Yes.

IBDsNYS6

Abowd - Direct

1 Q. The Census Bureau is bound by OMB standards and guidelines,  
2 correct?

3 A. The office of the chief statistician is charged with  
4 supervising the activities of the statistical agencies of the  
5 United States Government, yes.

6 Q. I want to turn to page 16 of the document, of the PDF which  
7 is page 11 of the document for the record.

8 Standard 2.3 reads: Agencies must design and administer  
9 their data collection instruments and methods in a manner that  
10 achieves the best balance between maximizing data quality and  
11 controlling measurement error while minimizing respondent  
12 burden and cost.

13 I read that correctly, right?

14 A. Yes, you did.

15 Q. And the Census Bureau is bound by standard 2.3, correct?

16 A. The Census Bureau is required by the Office of Management  
17 and Budget to justify its actions in light of standard 2.3.

18 Q. Dr. Abowd, within the meaning of standard 2.3, the  
19 Secretary's chosen option, alternative D, results in lower data  
20 quality than the Census Bureau's recommendation of  
21 alternative C, correct?

22 A. That's correct.

23 Q. Dr. Abowd, within the meaning of standard 2.3, the  
24 Secretary's chosen option of alternative D also has a higher  
25 respondent burden than the Census Bureau's recommendation of

IBDsNYS6

Abowd - Direct

1 alternative C, correct?

2 A. That's correct.

3 Q. Dr. Abowd, within the meaning of standard 2.3, the  
4 Secretary's chosen option of alternative D has a higher cost  
5 than the Census Bureau's recommendation alternative C, correct?

6 A. That's correct.

7 Q. Guideline 2.3.1 reads: Design the data collection  
8 instrument in a manner that minimizes respondent burden, while  
9 maximizing data quality.

10 Did I read that right?

11 A. Yes, you did.

12 Q. Dr. Abowd, choosing alternative D over alternative C does  
13 not comport with guideline 2.3.1, correct?

14 A. So the Census Bureau's obligation is not to determine how  
15 OMB will interpret guideline 2.3.1 in terms of our actions.

16 I think I already said alternative D delivers higher  
17 quality data at lower cost.

18 Q. And alternative C --

19 A. I'm sorry. I misspoke.

20 Q. Alternative C delivers high quality data at lower cost?

21 A. That's what I meant to say. Sorry.

22 Q. It does so with lower respondent burden, correct?

23 A. Yes, it does.

24 Q. All of that and choosing alternative C would be consistent  
25 with guideline 2.3.1, correct?

IBDsNYS6

Abowd - Direct

1 A. Yes, it would.

2 Q. In the meetings that you had with Commerce Department  
3 officials, you heard Commerce Department officials opine that  
4 alternative D would be better than alternative C, right?

5 A. So in none of the meetings -- first of all, I only met with  
6 the Secretary once on this subject. I believe with the Under  
7 Secretary only once.

8 And I believe in those meetings, some staff members  
9 may have opined there are reasons why they thought that certain  
10 alternatives would be better. But, frankly, I don't remember  
11 any such conversations. I remember being asked a lot of  
12 questions and being asked questions that suggested that one or  
13 another of the persons in the room thought one way of doing it  
14 might be better than the other.

15 I'm sure I said this in my fact deposition. There was  
16 a very open discussion with both the Under Secretary and the  
17 Secretary in the only time I was in a meeting with them on this  
18 subject. Subsequently, Dr. Lamas had additional discussions  
19 with them, I think primarily Dr. Jarmin, and I won't  
20 characterize those because I wasn't in those meetings.

21 Q. Dr. Abowd, you remember a meeting where a member of  
22 Secretary Ross' staff, Earl Comstock, expressed the opinion  
23 that alternative D would be superior to alternative C because  
24 it would enable you to fill the gaps in the administrative  
25 record?

IBDsNYS6

Abowd - Direct

1 A. So, frankly, I don't remember being in a meeting when  
2 alternative D was already on the table. He was in the meeting  
3 on February 12, but I don't believe we were discussing  
4 alternative D at that time, except in the sense of comparing  
5 B to C. I don't recall being in a meeting with him.

6 Q. Dr. Abowd, I'm going to bring up for you a section of your  
7 deposition transcript on October 5, 2018, page 422, lines 3  
8 through 11.

9 Go ahead and read that and see if it refreshes your  
10 recollection.

11 A. OK. Out loud?

12 (Pause)

13 Q. Does that refresh your recollection, Dr. Abowd?

14 MR. EHRLICH: Your Honor, I would say, again, he is  
15 testifying there as a 30(b)(6) witness for the Census Bureau.

16 THE COURT: I think the law is clear you can show a  
17 witness absolutely anything to refresh his recollection, so  
18 that is what is being done here.

19 The objection's overruled.

20 A. May I ask to see the question that preceded this?

21 Q. You could. Sure.

22 THE COURT: For the record, I recall a lecture for the  
23 bar saying that you could refresh recollection with a bowl of  
24 fettuccine alfredo. By that standard, this is certainly  
25 proper.

IBDsNYS6

Abowd - Direct

1 Go ahead.

2 BY MR. HO:

3 Q. The previous question is on page 421, line 17. Feel free  
4 to read that to yourself.

5 Just let me know when you're ready.

6 (Pause)

7 A. I would like to qualify that --

8 Q. I haven't put a question to you yet, Dr. Abowd.

9 A. OK. Go ahead.

10 Q. Could I?

11 A. Yes. Go ahead.

12 Q. Reading that, does that refresh your recollection about  
13 whether or not you've ever heard Earl Comstock express the view  
14 that alternative D is superior to alternative C because it  
15 fills in the gaps in the administrative record?

16 A. So I understood my duty when I was testifying as the  
17 agency's 30(b)(6) witness --

18 THE COURT: Hold on, Doctor. The answer to that  
19 question is either yes or no. It either refreshes your  
20 recollection --

21 THE WITNESS: Yes, it does refresh my recollection.

22 THE COURT: Now I'm sure Mr. Ho will ask you another  
23 question.

24 BY MR. HO:

25 Q. You don't agree with Mr. Comstock's opinion, right,



IBDsNYS6

Abowd - Direct

1 Dr. Abowd?

2 A. That's correct.

3 Q. And the Census Bureau does not agree with Mr. Comstock's  
4 opinion, right, Dr. Abowd?

5 A. That is correct.

6 Q. The Census Bureau communicated its disagreement with that  
7 opinion to Mr. Comstock, right?

8 A. Yes, that is correct.

9 Q. And if Mr. Comstock testified in a deposition, Dr. Abowd,  
10 that the Census Bureau never communicated its disagreement with  
11 that opinion, Mr. Comstock would be wrong, right, Dr. Abowd?

12 A. I believe that's the case, yes.

13 Q. Secretary Ross didn't choose alternative C, he chose  
14 alternative D anyway, right, Dr. Abowd?

15 A. That's correct.

16 Q. Now, I just want to back up and ask you a few questions  
17 about how this process unfolded.

18 Dr. Abowd, you would agree that normally, the process of  
19 testing content on the census, is a decade-long process  
20 involving multiple tests and various randomized control tests,  
21 correct?

22 A. Yes.

23 Q. Lets bring up Plaintiffs' Exhibit 271. This has been  
24 admitted into the trial record. This is 2020 census program  
25 memorandum series 2016.05, dated April 29, 2016, from Lisa

IBDsNYS6

Abowd - Direct

1 Blumerman.

2 A. Blumerman.

3 Q. Blumerman. Thank you, Dr. Abowd.

4 The subject of this memo is: Plan development and  
5 submission of subjects planned for the 2020 census program and  
6 questions planned for the 2020 census program.

7 Right, Dr. Abowd?

8 A. Yes.

9 Q. I'm going to refer to this document as the Blumerman memo.

10 OK?

11 A. Yes.

12 Q. Now, as of the date that she signed this memo, Lisa  
13 Blumerman was an associate director for the 2020 census,  
14 correct?

15 A. That's correct.

16 Q. Lets turn to page three. I want to look at the section  
17 under the header Federal Agency Input.

18 The first paragraph, the last sentence reads: Federal  
19 agencies with known uses of the 2020 census or ACS content, and  
20 sector agencies, will receive a letter with instructions for  
21 how federal data users may provide updates to the documentation  
22 of data uses. Responses should be received before July 1,  
23 2016. Census Bureau staff may follow up with federal users  
24 directly if more clarification is required.

25 Dr. Abowd, do these sentence conform to your understanding

IBDsNYS6

Abowd - Direct

1 of how the content review was conducted and presented to  
2 members of the 2020 census executive steering committee?

3 A. Yes.

4 Q. The Department of Justice's request to add a citizenship  
5 question was not received by July 1, 2016, correct?

6 A. That's correct.

7 Q. To the best of your knowledge, the Department of Justice  
8 did not previously write to the Census Bureau about adding a  
9 citizenship question prior to December 2017, right?

10 A. That's correct.

11 Q. And prior to December 2017, in fact, the Census Bureau had  
12 never heard from the Department of Justice that existing CVAP  
13 data produced by the Census Bureau was not ideal for purposes  
14 of DOJ's VRA enforcement work, correct?

15 A. I'll answer your question, but I want to just see if you  
16 misspoke.

17 Did you mean prior to July 1, 2016? You said '17.

18 Q. I said December 2017. I think I meant December 2017.

19 Before the request, the Gary letter came into the Census  
20 Bureau, the Department of Justice had never communicated to the  
21 Census Bureau that ACS CVAP data was not ideal for DOJ's VRA  
22 enforcement purposes, right, Dr. Abowd?

23 A. That's correct.

24 Q. Lets go back to the Blumerman memo, and I want to look at  
25 page four of the memo.

IBDsNYS6

Abowd - Direct

1           There is a header that reads Content Determination, and the  
2 second paragraph, last sentence reads: Final proposed  
3 questions are based on the results of extensive cognitive  
4 testing, field testing, other ongoing research, and input from  
5 advisory committees.

6           That is your understanding of what the process for the 2020  
7 census was presented to the Census Bureau's 2020 executive  
8 steering committee, right?

9           A. The memo simultaneously describes ACS and 2020 census, but  
10 I believe that sentence was intended to apply to both, yes.

11          Q. Now, your understanding is that the 2010 full census  
12 questionnaire was subjective to cognitive testing, right,  
13 Dr. Abowd?

14          A. Yes.

15          Q. There has been no cognitive testing, however, of the full  
16 2020 census questionnaire, including a citizenship question,  
17 correct?

18          A. That's correct.

19          Q. Now, lets talk about the second component here, the next  
20 component after cognitive testing, field testing.

21          To the best of your knowledge, Dr. Abowd, the full 2010  
22 decennial census questionnaire was field tested, correct?

23          A. That's correct.

24          Q. The full 2020 census questionnaire, including a citizenship  
25 question, has not been field tested, correct?

IBDsNYS6

Abowd - Direct

1 A. That's correct.

2 Q. Now, there were, I believe, some recent trials that have  
3 been described as the end-to-end test this year, Dr. Abowd?

4 A. So the 2018 end-to-end census test was conducted this year,  
5 yes.

6 Q. And that is sort of like the last dress rehearsal for the  
7 2020 census, right?

8 A. It's the last large scale test of the 2020 census, correct.

9 Q. The end-to-end test did not include a citizenship question,  
10 correct?

11 A. That is correct.

12 Q. And as of the date of your last deposition in this case,  
13 October 12, 2018, there were still no plans for field testing  
14 of the full 2020 census questionnaire, including a citizenship  
15 question, correct?

16 A. I don't know that you asked me the question in that form at  
17 my October 12 deposition.

18 Q. I wasn't there, so I certainly couldn't have, but let me  
19 put a different question to you, Dr. Abowd.

20 At the time that Secretary Ross made his decision to  
21 include a citizenship question on the census, there were no  
22 plans for field testing of the census questionnaire, including  
23 a citizenship question, correct?

24 A. That's correct.

25 Q. Now, Dr. Abowd, after the 1990 census, the Census Bureau

IBDsNYS6

Abowd - Direct

1 investigated the possibility of adding a question concerning  
2 respondents' Social Security numbers on the census short form,  
3 correct?

4 A. Yes.

5 Q. And the Census Bureau conducted an RCT comparing a version  
6 of the short form with and without a question asking for a  
7 Social Security number, correct?

8 A. That's correct.

9 Q. And the RCT assessed the impact on self-response rates of a  
10 Social Security number question, correct?

11 A. That's correct.

12 Q. And in the RCT, the self-response rate fell off in the  
13 group that had the Social Security number question by 3.4  
14 percent, correct?

15 A. That's correct.

16 Q. And the conclusion that was drawn from that RCT was that  
17 asking for a Social Security number would be sensitive, right?

18 A. Yes.

19 Q. And today, the Census Bureau does not request for Social  
20 Security numbers on the census questionnaire, right?

21 A. We never have.

22 Q. And one of the reasons for that is a concern about the  
23 effect of that question on self-response rates, correct?

24 A. I believe that's correct, yes.

25 Q. And it is your opinion, Dr. Abowd, that for some sub

IBDsNYS6

Abowd - Direct

1 populations, asking about citizenship might be just as  
2 sensitive as asking a question about Social Security numbers,  
3 right?

4 A. Yes.

5 Q. In fact, it is your opinion that for some sub populations,  
6 asking a question about citizenship would be more sensitive  
7 than asking a question about Social Security numbers, correct?

8 A. I think I said could, but yes.

9 Q. The RCT to assess the effect of a Social Security number on  
10 self-response rates to the census was conducted before any  
11 decision was made about whether to include a Social Security  
12 number question on the census, right?

13 A. Yes.

14 Q. And no similar RCT has taken place here along those lines  
15 before a decision was made to include a citizenship question,  
16 correct?

17 A. Yes.

18 Q. Lets bring up Plaintiffs' Exhibit 268.

19 THE COURT: Actually, lets take our break here instead  
20 of doing that. It is 3:22. We'll start again at 3:32.

21 Because we're still in the direct examination,  
22 Dr. Abowd, you should not communicate about the substance of  
23 your testimony with defense counsel.

24 I'll see you in ten minutes. Thanks.

25 (Recess)

IBDsNYS6

Abowd - Direct

1 THE COURT: All right. Dr. Abowd, you're still under  
2 oath.

3 Mr. Ho, you may continue.

4 MR. HO: Thank you, your Honor.

5 BY MR. HO:

6 Q. Dr. Abowd, I want to ask you about Plaintiffs' Exhibit 268,  
7 which has been admitted into evidence.

8 Dr. Abowd, this is a proposed content test on a citizenship  
9 question dated May 3, 2018, correct?

10 A. Yes.

11 Q. This is a proposal for an RCT for a citizenship question on  
12 the census, correct?

13 A. It is an RCT for the content of alternative versions of the  
14 citizenship question on the -- using the ACS, yes.

15 Q. This RCT proposal was created by Census Bureau staff,  
16 correct?

17 A. Yes.

18 Q. And it was made in May of 2018?

19 A. That's correct.

20 Q. And the proposal was to initiate an RCT in either November  
21 of 2018 or February of 2019, correct?

22 A. That's correct.

23 Q. The RCT, as proposed here, would have taken six weeks to  
24 collect the data, correct?

25 A. Yes.



IBDsNYS6

Abowd - Direct

1 Q. Either if it had been in November of 2018 or February of  
2 2019, either way the RCT could have been completed before  
3 census forms are due to be printed, correct?

4 A. Yes.

5 Q. And the cost of this proposal ranges depending upon the  
6 options you chose between \$2 million for one option to  
7 \$4.1 million for another option, correct?

8 A. Yes.

9 Q. The Census Bureau has that money, right, Dr. Abowd?

10 A. Yes.

11 Q. This proposal was rejected by a group of decision-makers,  
12 including Under Secretary Karen Dunn Kelley, correct?

13 A. As I testified in my 30(b)(6), the decision not to conduct  
14 this RCT was made by -- excuse me -- Dr. Enrique Lamas'  
15 consultation with the Under Secretary, yes.

16 Q. I would like to bring up Plaintiffs' Exhibit 271, the  
17 Blumerman memo.

18 THE COURT: Who was the second person, Dr. Jarmin?

19 THE WITNESS: Deputy, Acting Deputy Director Enrique  
20 Lamas. Dr. Lamas.

21 THE COURT: Thank you.

22 BY MR. HO:

23 Q. Back to page four of the Blumerman memo.

24 The page entitled Content Determination, and that last  
25 sentence in the second paragraph.

IBDsNYS6

Abowd - Direct

1 We talked about cognitive testing, field testing, and RCT,  
2 which I put in the category of ongoing research. Those are all  
3 different things, right, Dr. Abowd; like doing an RCT and  
4 conducting that, that doesn't take the place of cognitive  
5 testing and field testing, right?

6 A. In some cases, they are intertwined, but they are  
7 considered distinct activities, yes.

8 Q. Lets talk about -- I'm sorry. One other question.

9 If you do an RCT and the results come out suggesting that a  
10 question could reduce response rates, do you just plow ahead  
11 and do that, or would you conduct more analysis before using a  
12 question that you had tested?

13 A. When we conduct an RCT, we expect it to produce actionable  
14 data, and exactly what actions would be taken as a consequence  
15 of those data depends on the structure of the RCT and the point  
16 in the survey development cycle that it is conducted.

17 Q. Just to be clear, doing an RCT, it is not like a box that  
18 you check, and regardless of what the results are, you just  
19 say, Great, we've conducted an RCT, we can go ahead now?

20 You have to actually look at the results of the RCT  
21 and incorporate that into your process, correct?

22 A. That is the justification for running an RCT, yes.

23 Q. OK. Lets talk about the next item here, input from  
24 advisory committees.

25 Input was not solicited from the Census Bureau's advisory

IBDsNYS6

Abowd - Direct

1 committees before Secretary Ross made his decision to add a  
2 citizenship question to the 2020 census, correct?

3 A. That's correct.

4 Q. If you had been given more advance notice, then the Census  
5 Bureau could have consulted with, for example, CSAC, the Census  
6 Scientific Advisory Committee, before a decision was made,  
7 right?

8 A. Yes.

9 Q. And if you had been given more advance notice, you would  
10 have convened a working group with the advisory committees to  
11 study the citizenship question, right?

12 A. Probably.

13 Q. And you would have discussed that question actively with  
14 the working groups, right?

15 A. Yes.

16 Q. But no such act of discussions with the advisory committees  
17 happened before Secretary Ross made his decision, correct?

18 A. That's correct.

19 Q. Now, backing up to talk again a little bit more about the  
20 process before Secretary Ross made his decision, Dr. Abowd,  
21 after you communicated the Census Bureau's initial views in  
22 your February 12 memo with Secretary Ross, the Commerce  
23 Department sent a list of 35 followup questions to the Census  
24 Bureau, correct?

25 A. Yes.

IBDsNYS6

Abowd - Direct

1 Q. And some of those questions concerned testing, right?

2 A. Yes, they do.

3 Q. OK. Lets bring up Plaintiffs' Exhibit 140.

4 These are draft responses to those 35 questions from  
5 the Commerce Department, right?

6 A. Draft responses from the Census Bureau to the Commerce  
7 Department, yes.

8 Q. Thank you for that correction.

9 Just for the record, this document has been admitted into  
10 the trial record, and it is part of the supplemental  
11 administrative record in this case.

12 Dr. Abowd, it is your belief that Acting Director Jarmin  
13 intended for you to take responsibility for making sure that  
14 the answers to these questions were accurate, correct?

15 A. For the vast majority of them, yes. He asked me to track  
16 that the person assigned to deliver an answer had done so, to  
17 vet that answer, to communicate that answer to Burton Reist,  
18 the chief of the decennial communications office, and then  
19 Burton Reist was charged with delivering those answers to the  
20 Commerce Department on a flow basis. They did go back and  
21 forth before we determined that we adequately answered each of  
22 the questions.

23 Q. It is your understanding that Acting Director Jarmin  
24 intended you to be ultimately responsible for making sure that  
25 the answers to these questions were accurate, correct?

IBDsNYS6

Abowd - Direct

1 A. Yes.

2 Q. Lets turn to page six in these draft responses, which is  
3 administrative record page 10900.

4 I want to ask you about question 31. Question 31 asks:  
5 What was the process that was used in the past to get questions  
6 added to the decennial census, or do we have something similar  
7 where a precedent was established.

8 Did I read that right?

9 A. Yes.

10 Q. The draft response reads: The Census Bureau follows a  
11 well-established process when adding or changing content on the  
12 census or ACS to ensure the data fulfill legal and regulatory  
13 requirements established by congress. Adding a question or  
14 making a change to the decennial census or the ACS involves  
15 extensive testing, review, and evaluation. This process  
16 ensures the change is necessary and will produce quality,  
17 useful information for the nation.

18 Did I read that right?

19 A. Yes, you did.

20 Q. OK. The text here in this draft response, this was sent  
21 from the Census Bureau to the Commerce Department, correct?

22 A. As I said before, several versions were sent, but I believe  
23 this is one of them, yes.

24 Q. This is one of the versions of the draft response to  
25 question 31 that the Census Bureau sent to the Commerce

IBDsNYS6

Abowd - Direct

1 Department?

2 A. Yes.

3 Q. And this states that, in this draft response, that adding  
4 a question to the decennial census or ACS involves extensive  
5 testing, review, and evaluation, correct?

6 A. Yes.

7 Q. And as of March 1, 2018, that was your understanding, that  
8 adding a new question to the decennial census involves  
9 extensive testing, review, and evaluation, correct?

10 A. Correct.

11 Q. I want to show you a different version of this document.

12 I'm sorry. Before we move on, could we bring that back up  
13 just for a second. On the next page, I just want to look at  
14 the bullets here.

15 I'm sorry. Can we get the text just above the bullets too.

16 This is part of the draft response to question 31, right,  
17 Dr. Abowd?

18 A. Yes.

19 Q. It reads: The Census Bureau and the Office of Management  
20 and Budget (OMB) have laid out a formal process for making  
21 content changes.

22 Then there is a series of six bullets after that, right?

23 A. Correct.

24 Q. And is it an accurate summary to say that this formal  
25 process, as described in these draft responses, includes

IBDsNYS6

Abowd - Direct

1 federal agencies evaluating their data needs, a proposal that  
2 demonstrates a clear statutory regulatory need for the data,  
3 final proposed questions resulting from extensive cognitive and  
4 field testing, several opportunities for public comment, a  
5 decision made in consultation with OMB, and then finally, if  
6 approved, the Census Bureau implementing the change, is that  
7 right?

8 A. Yes.

9 Q. OK. Now, I want to show you Plaintiffs' Exhibit 23.

10 Dr. Abowd, this has been admitted into evidence, and it is  
11 in the initial administrative record in this case as the final  
12 version of responses to the 35 questions.

13 Does that comport with your recollection?

14 A. May I see all the pages of the document, please?

15 Q. Sure. Maybe we could scroll through.

16 Does that look right to you, Dr. Abowd?

17 A. Yes.

18 Q. Just to be clear, this version of the document was produced  
19 in the initial administrative record in this case, but the  
20 draft responses that we were talking about earlier, those were  
21 not in the initial administrative record in this case, is that  
22 your recollection?

23 A. It's my recollection that this is the version that was in  
24 the first 1300 or so pages of administrative record that were  
25 these, yes.

IBDsNYS6

Abowd - Direct

1 Q. Lets look at page 11 and the response to question 31 that  
2 is in the final version of these responses in the  
3 administrative record.

4 Question 31 about the process used in the past for adding  
5 questions to the decennial census, the final version of this  
6 response reads: Because no new questions have been added to  
7 the decennial census (for nearly 20 years), the Census Bureau  
8 did not feel bound by past precedent when considering the  
9 Department of Justice's request. Rather, the Census Bureau is  
10 working with all relevant stakeholders to ensure that legal and  
11 regulatory requirements are filled and that questions will  
12 produce quality, useful information for the nation. As you are  
13 aware, that process is ongoing at your direction.

14 Did I read that correctly?

15 A. Yes, you did.

16 Q. OK. So the final version of these responses, as found in  
17 the initial administrative record in this case, makes no  
18 reference to a well-established process for adding content to  
19 the census, right?

20 A. That's correct.

21 Q. Instead, the final version in the administrative record  
22 says that the Census Bureau did not feel bound by past  
23 precedent, right?

24 A. That's what it says.

25 Q. And this final version here in the initial administrative



IBDsNYS6

Abowd - Direct

1 record in this case, it makes no reference to extensive  
2 testing, review, and evaluation, correct?

3 A. That's correct.

4 Q. It also makes no reference to ensuring that a change to the  
5 census is necessary, right?

6 A. It makes reference to consulting with stakeholders, but it  
7 doesn't explicitly say the things that the original answer  
8 said.

9 Q. It doesn't use the word necessary to ensure that a change  
10 is necessary to the 2020 census, right, Dr. Abowd?

11 A. That's correct.

12 Q. Dr. Abowd, you didn't write this final version of the  
13 response to question 31 that appear in the administrative  
14 record, right?

15 A. That's correct.

16 Q. You're not sure who wrote it, right?

17 A. That's also correct.

18 Q. You don't know if someone at the census -- I mean, you're  
19 not aware of someone at the Census Bureau having written this,  
20 Dr. Abowd?

21 A. I had the control copy, and it is not in the last version  
22 of the control copy in the folders that were searched for the  
23 production of the administrative record.

24 Q. So this version, Dr. Abowd, that says that the Census  
25 Bureau did not feel bound by past precedent, that phrase is not

IBDsNYS6

Abowd - Direct

1 in the last version of this document in the possession of the  
2 Census Bureau, correct?

3 A. As far as I know, correct.

4 Q. This final version, Dr. Abowd, which makes representations  
5 about what the Census Bureau felt bound by, was not written by  
6 someone at the Census Bureau, right, Dr. Abowd?

7 A. Not to the best -- not to the best of my knowledge.

8 Q. Are you aware, Dr. Abowd, that this was written by someone  
9 at the Commerce Department?

10 A. I don't know who wrote this.

11 THE COURT: Do you know if any of the other questions  
12 changed between the final copy that you had on your computer  
13 and this copy?

14 THE WITNESS: I do not believe any other answers are  
15 changed.

16 BY MR. HO:

17 Q. Dr. Abowd, just to close the loop on something you  
18 mentioned earlier. You made a reference to a control copy.

19 What did you mean by that?

20 A. I meant that because I was keeping track of who had been  
21 assigned to answer the questions, and then when I got an answer  
22 back from that person getting that answer vetted, and then  
23 copying it into the control copy -- master copy, I think, is a  
24 synonym -- that I understood to be the final versions of each  
25 of those answers.

IBDsNYS6

Abowd - Direct

1 Q. So you maintain possession of the master version of  
2 responses to these questions, right?

3 A. We had some custody issues. Burton Reist also had a  
4 version that he exchanged without passing through the control  
5 copy, but we did synchronize them.

6 Q. OK. And as far as you know, the final version of the  
7 answer to question 31, a question that was posed by the  
8 Commerce Department to the Census Bureau and which makes  
9 representations about what the Census Bureau felt bound by,  
10 was not written by someone at the Census Bureau, correct?

11 MR. EHRLICH: Objection.

12 THE COURT: Sustained.

13 Can you tell me what you did with the control copy as  
14 you've described it?

15 In other words, where did it go between the time that  
16 you considered it to be final and the creation of this  
17 document; do you know?

18 THE WITNESS: So, I do, your Honor. I know that  
19 Deputy Director, Acting Deputy Director Lamas asked Burton  
20 Reist, who is the chief of the decennial communications office,  
21 to communicate the answers back to Commerce on a flow basis.

22 So I was keeping a master copy, but Burton was sending  
23 answers by e-mail as we made them and as they were vetted up to  
24 Commerce. Several incomplete copies of the document were  
25 exchanged back and forth, and eventually inside the Census

IBDsNYS6

Abowd - Direct

1 Bureau, around March -- 1, there is a date on the control copy,  
2 I think it is March 1 -- we agreed that these were the final  
3 answers.

4 That is the copy that I have sitting in my -- well,  
5 there was an area of secured disk that we were using to store  
6 the documents related to the citizenship question that is still  
7 there.

8 THE COURT: What, if anything, did you do with it  
9 after March 1, when, as far as you were concerned, it was the  
10 final version?

11 THE WITNESS: I believe I was copied on an e-mail  
12 where it was communicated back, then I just moved on.

13 THE COURT: Communicated back meaning sent?

14 THE WITNESS: Sent to Commerce.

15 THE COURT: By Commerce, you mean who at Commerce  
16 would have received it?

17 THE WITNESS: So these e-mail threads tended to grow  
18 organically. Burton Reist would initiate them, and then there  
19 would be a back-and-forth exchange, and then someone like  
20 Dr. Lamas would ask to put a consolidated set together and send  
21 them up and say these are -- he would have called it the latest  
22 version. There was a lot of back and forth because they asked  
23 for a lot of clarifications as we were developing the answers.  
24 And, in fact, the final version has a spreadsheet addendum that  
25 I haven't been shown, but I think is the next thing in the

IBDsNYS6

Abowd - Direct

1 administrative record.

2 So around March 1, after we had all agreed that these  
3 were the answers, and as we understood it, Commerce had agreed  
4 that we had answered their questions, I marked the March 1 copy  
5 that was sent, whatever date it was sent, I believe it was  
6 March 1, I marked that copy in the secured folder the final  
7 one.

8 THE COURT: All right. But do you, sitting here  
9 today, do you know who that copy was sent to at Commerce?

10 THE WITNESS: I believe it is in the administrative  
11 record, the e-mail that conveyed it, but I don't remember. I  
12 believe at least the Under Secretary would have been on the  
13 list.

14 THE COURT: The Under Secretary being Kelley?

15 THE WITNESS: Dunn Kelley.

16 THE COURT: Thank you.

17 BY MR. HO:

18 Q. The text written in this final version of the response to  
19 question 31 posed by the Commerce Department to the Census  
20 Bureau, Dr. Abowd, this is not the text in the final version  
21 that the Census Bureau transmitted to the Commerce Department,  
22 correct?

23 A. That's correct.

24 Q. Lets go back to Plaintiffs' Exhibit 26, Secretary Ross'  
25 decision memo.

IBDsNYS6

Abowd - Direct

1 I want to look, again, at that second paragraph on the  
2 first page, following receipt of the DOJ request. That  
3 sentence.

4 Dr. Abowd, the analyses that we've been discussing that you  
5 conducted of a possible effect of a citizenship question on the  
6 census, you did all that on pretty short notice, right?

7 A. Relatively quickly, yes.

8 Q. I mean, you learned about it around December 15, 2017, and  
9 you turned around a memo to the Commerce Secretary January 19,  
10 right?

11 A. That's correct.

12 Q. A lot of analysis in a short period of time, right?

13 A. I have to say, that isn't particularly unusual, but it is  
14 correct.

15 Q. It was over the holidays too, right?

16 A. That is also true.

17 Q. And you performed that work to the best of your ability,  
18 right?

19 A. Yes.

20 Q. Do you think it was an impressive amount of work that the  
21 swat team under your direction produced in that period of time,  
22 Dr. Abowd?

23 A. My understanding is they didn't get a lot of sleep.

24 Q. I mean, you're submitting it for peer review for  
25 publication, right?

IBDsNYS6

Abowd - Direct

1 A. So I'm not an author of the technical paper. It has not  
2 yet been submitted for peer review, but we do expect to do  
3 that. That is the reason it was released as a technical paper,  
4 yes.

5 Q. The entire time you were conducting that analysis over the  
6 holidays, you were operating under the impression that the  
7 Secretary set out to take a hard look at this issue following  
8 the Department of Justice's request, correct?

9 A. Yes.

10 Q. And you were under the impression that all that hard work  
11 that you were doing might have some bearing on the Secretary's  
12 ultimate decision, correct?

13 A. Yes.

14 Q. I want to bring up Plaintiffs' Exhibit 2. This is the  
15 supplemental memorandum by Secretary of Commerce Ross in the  
16 administrative record that's been admitted. I want to  
17 highlight the first three sentences.

18 I want to talk about -- well, lets just talk about the  
19 second sentence.

20 Soon after my appointment as Secretary of Commerce, I  
21 began considering various fundamental issues regarding the  
22 upcoming 2020 census, including funding and content.

23 The next sentence reads: Part of these considerations  
24 included whether to reinstate a citizenship question, which  
25 other senior administration officials had previously raised.

IBDsNYS6

Abowd - Direct

1 Dr. Abowd, now, you know that Secretary Ross, as stated in  
2 his supplemental memo in the administrative record, began  
3 considering this issue of a citizenship question soon after his  
4 appointment as Commerce Secretary in early 2017, correct?

5 A. Yes.

6 Q. OK. But during that period, when you and the swat team  
7 were working hard on your analysis between the middle of  
8 December of 2017 and January of 2018, you were not aware that  
9 Secretary Ross had begun considering a citizenship question in  
10 early 2017, right?

11 A. That's correct.

12 Q. And at the meeting that you had with Secretary Ross on  
13 February 12, when you presented your findings from all of that  
14 analysis that you conducted, no one mentioned to you that  
15 Secretary Ross had already begun considering this question in  
16 early 2017, correct?

17 A. That's correct, but we did have a very open discussion.

18 Q. That open discussion didn't include the fact that Secretary  
19 Ross had already begun considering this issue in early 2017,  
20 right, Dr. Abowd?

21 A. That's correct.

22 Q. And as of the date of Secretary Ross' decision memo, you  
23 were not aware that Steve Bannon and Secretary Ross had had  
24 conversations about whether or not Secretary Ross would speak  
25 to Kansas Secretary of State Kobach about Mr. Kobach's ideas



IBDsNYS6

Abowd - Direct

1 for a citizenship question on the census, correct?

2 A. That's correct.

3 Q. As of the date of Secretary Ross' decision memo, you were  
4 not aware that Secretary Ross had a telephone conversation with  
5 Mr. Kobach about Mr. Kobach's ideas for a citizenship question  
6 on the census, right?

7 A. That's correct.

8 Q. And as of the date of Secretary Ross' decision memo, you  
9 were not aware that in May of 2017, seven months before the  
10 Department of Justice's request to the Census Bureau, Secretary  
11 Ross wrote an e-mail to Earl Comstock stating that he was,  
12 quote, mystified why nothing have been done in response to my  
13 months' old request that we include a citizenship question,  
14 correct?

15 A. I was not aware of that, correct.

16 Q. And as of the date of Secretary Ross' decision memo, you  
17 were not aware that in response to that e-mail, Earl Comstock  
18 wrote to Secretary Ross that, quote, on the citizenship  
19 question, we will get that in place and, quote, and that it  
20 would be necessary to, quote, work with justice to get them to  
21 request that citizenship be added back to a census question,  
22 correct?

23 A. I was not aware of that, correct.

24 Q. Dr. Abowd, I want to show you again some deposition  
25 testimony that has been designated as evidence in this case.

IBDsNYS6

Abowd - Direct

1 For the record, your Honor, it is page 67, line five,  
2 of Acting Attorney General John Gore's deposition through line  
3 five of page 68.

4 I want to ask you some questions.

5 MR. EHRLICH: Your Honor, same objection as last time.

6 THE COURT: Same ruling.

7 (Videotape played)

8 BY MR. HO:

9 Q. Dr. Abowd, when you conducted all this work up through the  
10 date of Secretary Ross' decision memo, you were not aware that  
11 the Department of Commerce had initiated conversations with the  
12 Justice Department about the citizenship question rather than  
13 the other way around, correct?

14 A. That's correct.

15 Q. During your meeting with Secretary Ross on February 12, no  
16 one told you that, right?

17 A. That's correct.

18 Q. You didn't learn that it was Department of Commerce  
19 officials who had requested that a citizenship question be  
20 added to the census, rather than the other way around, until  
21 after this litigation was initiated, right, Dr. Abowd?

22 A. That's correct.

23 Q. And that was when the administrative record in this  
24 litigation was lodged in June of this year, right, Dr. Abowd?

25 A. That's correct.

IBDsNYS6

Abowd - Direct

1 Q. Dr. Abowd, you were surprised, weren't you, when you  
2 learned that it was Commerce officials who had requested that  
3 the Department of Justice request a citizenship question on the  
4 census, correct?

5 A. Yes.

6 Q. And among the senior executives at the Census Bureau,  
7 everyone you know was also surprised to learn that the  
8 Department of Commerce had initiated conversations with the  
9 Department of Justice to convince the Department of Justice to  
10 request that the citizenship question be added to the 2020  
11 census, correct?

12 MR. EHRLICH: Objection, mischaracterizes the  
13 evidence.

14 THE COURT: Overruled.

15 A. Could you restate the question, please?

16 Q. Sure.

17 Among the senior executives at the Census Bureau,  
18 Dr. Abowd, everyone you know was also surprised to learn that  
19 it was the Department of Commerce that reached out to the  
20 Department of Justice to ask the Department of Justice to  
21 request a citizenship question, correct?

22 A. Everyone I know at the Census Bureau, including all the  
23 senior executives, were surprised by the portion of the  
24 administrative record that predates December 12, 2017.

25 Q. Dr. Abowd, as recently as August of this year, Commerce

IBDsNYS6

Abowd - Direct

1 Department officials still hadn't spoken with you about the  
2 fact that it was the Department of Commerce that had requested  
3 the Department of Justice request that a citizenship question  
4 be added to the 2020 census, correct?

5 A. That's correct.

6 Q. So to be clear, Dr. Abowd, that entire period of time from  
7 December, the middle of December, when you began analyzing the  
8 effect of the citizenship question, up through until June, when  
9 the administrative record in this case was lodged, your  
10 impression was that all that work that you were doing mattered,  
11 that it might affect the secretary's decision-making, right?

12 MR. EHRLICH: Objection.

13 THE COURT: Overruled.

14 A. From the beginning of the time we spent working on our  
15 technical response until today, I am discharging my obligations  
16 as the chief scientist at the Census Bureau.

17 Q. Dr. Abowd, my question, though, was that entire period of  
18 time from when you began conducting your analysis in the middle  
19 of December of 2017 up until when you saw the administrative  
20 record lodged in this case, you were under the impression that  
21 all of that work that you had done analyzing the effect of a  
22 citizenship question, that it mattered as far as the  
23 Secretary's decision-making process, right?

24 A. I was under the impression that it mattered in the conduct  
25 of the 2020 census, yes.

IBDsNYS6

Abowd - Direct

1 Q. And no one ever told you during that entire period of time  
2 that Commerce Department officials had initiated this entire  
3 process, correct?

4 A. No one told me that, but I am still under the impression it  
5 matters for the 2020 census.

6 (Continued on next page)

IbdWnys7

Abowd - Direct

1 BY MR. HO:

2 Q. Dr. Abowd, the 2020 census questionnaire will be finalized  
3 by June of 2019, correct?

4 A. That's when the final artwork is due at the printers, yes.

5 Q. With existing resources the Census Bureau can lock down the  
6 content of the census questionnaire by June 30, 2019, correct?

7 A. That's correct.

8 Q. Under the current budget, if there are changes to the paper  
9 questionnaire after June of 2019, that would impair the Census  
10 Bureau's ability to timely administer the 2020 census, correct?

11 A. That is correct.

12 Q. With exceptional resources, the final date for locking down  
13 the content of the census questionnaire is October 31, 2019,  
14 correct?

15 A. That is correct.

16 Q. Changes after October 31, 2019, would require major  
17 redesigns and might require congressional authorization, in  
18 your understanding, right, Dr. Abowd?

19 A. That is correct.

20 MR. HO: I want to return again to the Ross decision  
21 memo, Dr. Abowd, Plaintiffs' Exhibit 26. I want to look at the  
22 final page, page 8, the top paragraph, here.

23 Q. The secretary concluded that a citizenship question on the  
24 decennial census was necessary to provide a complete and  
25 accurate response to the DOJ request, correct?

IbdWnys7

Abowd - Direct

1 A. Yes.

2 Q. I want to ask you about that and I want to -- before  
3 getting too deep into that determination, I want to ask you  
4 about the kinds of data that DOJ currently has available. The  
5 Census Bureau produces various data files for redistricting  
6 purposes, right, Dr. Abowd?

7 A. Yes.

8 Q. And one of those redistricting data products from the  
9 Census Bureau is called the PL 94-171 data file, correct?

10 A. Yes.

11 Q. The PL 94-171 data file has information in it concerning  
12 total population at various levels of census geography,  
13 correct?

14 A. Yes, it does.

15 Q. And it has voting-age population at various levels of  
16 census geography, correct?

17 A. Yes.

18 Q. And it has voting-age population broken down by race and  
19 ethnicity at the census block level in it, correct?

20 A. Yes.

21 Q. But it does not have citizen voting-age population in it  
22 broken down by race and ethnicity at the individual block  
23 level, correct?

24 A. That's correct.

25 Q. The data in the PL 94-171 data file, that's based on

IbdWnys7

Abowd - Direct

1 responses to the decennial enumeration, correct?

2 A. Yes.

3 Q. And the Department of Justice uses that data file, right?

4 A. That's my understanding, yes.

5 Q. Also available to the public?

6 A. Yes, it is.

7 Q. The PL 94-171 data file, that's never had citizen  
8 voting-age population by race and ethnicity down to the block  
9 level, correct?

10 A. The PL 94-171 data have never included citizenship, that's  
11 correct.

12 Q. Never included citizenship data in it at any level of  
13 geography, correct?

14 A. To the best of my knowledge, yes.

15 Q. So, for citizen voting-age population, the Department of  
16 Justice, when it's doing its redistricting-related work, uses a  
17 separate tabulation of data from the Census Bureau, correct?

18 A. That's correct.

19 Q. And that's what we could call the CVAP tabulation?

20 A. Yes, sir.

21 Q. That's publicly available not just for the Department of  
22 Justice, right?

23 A. All such tabulations are publicly available, yes.

24 Q. Now, before the ACS -- I'm sorry.

25 And the CVAP tabulation, that's based on responses to the



IbdWnys7

Abowd - Direct

1 American Community Survey, correct?

2 A. That's correct.

3 Q. Now, before the American Community Survey, the Census  
4 Bureau produced CVAP data based on responses to the census long  
5 form, right?

6 A. Yes.

7 Q. Census long form was not distributed to the entire  
8 population, correct?

9 A. That's correct.

10 Q. So data derived from the long form, those were statistical  
11 estimates based on a sample survey, right?

12 A. Yes.

13 Q. That's also true of the ACS; that citizenship data derived  
14 from the ACS is also a statistical estimate based on a  
15 statistical sample, correct?

16 A. Yes.

17 Q. So both the long-form CVAP data used in the past and the  
18 ACS CVAP data used at present, both statistical estimates based  
19 on survey samples, correct?

20 A. Yes.

21 Q. And they both had margins of error, correct?

22 A. Sampling error, yes.

23 Q. Now, the total population data in the PL 94-171 data file,  
24 that's not sample-based, right?

25 A. That's correct.

IbdWnys7

Abowd - Direct

1 Q. But that data still does have some margins of error  
2 associated with it, right?

3 A. It has a nonsampling error, is what we call it, yes.

4 Q. The citizenship question, the proposal to add a citizenship  
5 question to the 2020 census is sometimes referred to as  
6 "reinstating a citizenship question." Have you heard that  
7 phrase, Dr. Abowd?

8 A. I believe that's the phrase the secretary used, yes.

9 Q. OK. And just to be clear, the 2000 census form sent to  
10 every household in America, that didn't have a citizenship  
11 question on it, right?

12 A. That's correct.

13 Q. And the citizenship data that DOJ currently uses based on  
14 statistical -- based on survey sample, that's not different  
15 from long-form citizenship data that the Department of Justice  
16 used to rely on in the sense that both are statistical samples  
17 with margins of error, right?

18 A. Both are samples with sampling error. Their designs are  
19 very different, so I don't -- I'm not saying yes to them being  
20 identical. They're both sample-based. The design of the  
21 American Community Survey is very different from the design of  
22 the old long-form sample.

23 Q. But it's not the case that one's a hard count and the other  
24 is not; they were both statistical samples with margins of  
25 error, right?

IbdWnys7

Abowd - Direct

1 A. That's correct.

2 Q. That's never changed, as far as you know; the Department of  
3 Justice, when it's needed CVAP data, it's always needed -- it's  
4 always relied on statistical samples with margins of error,  
5 right?

6 A. To the best of my knowledge, yes.

7 Q. Now, the ACS data are produced in both one-year and  
8 five-year bases, correct?

9 A. Tabulations of at least, yes, one-year and five-year  
10 summaries. Yes.

11 Q. One-year ACS estimates are produced from data collected in  
12 a single calendar year, right?

13 A. Yes.

14 Q. And five-year ACS estimates are produced based on data  
15 collected over a consecutive five-year period, correct?

16 A. That's correct.

17 Q. You'd agree that five-year ACS estimates have larger sample  
18 sizes than one-year ACS estimates, right?

19 A. For the same geographic area, yes.

20 Q. And five-year ACS estimates in comparison to one-year ACS  
21 estimates for the same geographic area would have smaller  
22 margins of error, correct?

23 A. Yes.

24 Q. And that would mean they're more precise than one-year ACS  
25 estimates, right?

IbdWnys7

Abowd - Direct

1 A. As long as timeliness is not a salient feature, yes.

2 Q. The tabulation of CVAP data produced from the ACS is based  
3 on five-year ACS estimates, not one-year ACS estimates,  
4 correct?

5 A. Correct.

6 Q. And the reason for that is that one-year ACS estimates are  
7 deemed sufficiently reliable only for areas that have a  
8 population of more than 65,000 people, correct?

9 A. There are a few additional criteria, but that's basically  
10 correct.

11 Q. By contrast, five-year ACS estimates are published by the  
12 Census Bureau as being reliable for smaller -- geographic areas  
13 with smaller populations, correct?

14 A. That's correct.

15 Q. As of today, it still hasn't been decided whether the PL  
16 94-171 file with total population data will also include the  
17 block-level CVAP data that the Census Bureau expects to  
18 assemble after the 2020 census, correct?

19 A. That's correct.

20 Q. So even if a citizenship question is included on the census  
21 questionnaire, as of now, we don't know whether or not there's  
22 going to be a single data set that has both total population  
23 and block-level CVAP data broken down by race or ethnicity,  
24 correct?

25 A. We don't know there will be a single data set, but we did

IbdWnys7

Abowd - Direct

1 commit to delivering block-level CVAP data in a timely fashion  
2 consistent with the delivery date for the PL 94.

3 Q. The Census Bureau hasn't made a decision yet about how it  
4 will process responses to the citizenship question alongside  
5 the administrative citizenship data that you have, correct?

6 A. That's correct.

7 Q. Dr. Abowd, even if a citizenship question remains on the  
8 2020 census questionnaire, the Census Bureau hasn't determined  
9 whether the block-level CVAP data that it produces will, in  
10 fact, be based primarily on responses to the citizenship  
11 question, correct?

12 A. That is correct.

13 Q. Dr. Abowd, let's assume now that the citizenship question  
14 stays on the 2020 census questionnaire and let's talk about  
15 how, to the extent you know right now, that would play out in  
16 practice in terms of producing a block-by-block-level-CVAP  
17 data. Responses to the census questionnaire are prohibited  
18 from disclosure under Title 13, correct?

19 A. Publications identifying a business or individual or  
20 household specifically and providing identifiable data on that  
21 entity are prohibited.

22 Q. And that prohibition on disclosure also applies, as far as  
23 you know, on prohibiting the disclosure of that information to  
24 the Department of Justice, correct?

25 A. That's correct.

IbdWnys7

Abowd - Direct

1 Q. Now, census blocks vary significantly in terms of the size  
2 of their populations, correct?

3 A. Yes, they do.

4 Q. Some census blocks have fewer than ten people on them,  
5 right?

6 A. Yes.

7 Q. Some census blocks have one person on them, right?

8 A. That's correct.

9 MR. HO: I want to bring up Plaintiffs' Exhibit 513,  
10 which we're using purely for demonstrative purposes. This is a  
11 map of the Fort Myers area, census blocks in Fort Myers, and if  
12 we could blow up kind of the middle of the map around where it  
13 says Lee. This was built using data from the Census Bureau's  
14 publicly available website of the total population on various  
15 census blocks.

16 Q. Dr. Abowd, if we look at some of these squares right around  
17 Lee, I mean, all of the census blocks right around where Lee is  
18 written have fewer than ten people on them, right?

19 A. Yes.

20 Q. And several of them have only one person on them, right?

21 A. Yes.

22 Q. So, Dr. Abowd, you'd agree with me that with respect to a  
23 census block that has only one person on it, when the Census  
24 Bureau produces block-by-block citizenship data, the Census  
25 Bureau was legally prohibited from producing data that would

IbdWnys7

Abowd - Direct

1 accurately reflect what that one person said in response to a  
2 citizenship question on the census, correct?

3 A. We interpret that provision of Title 13 as prohibiting us  
4 from releasing data at the block level that would make it  
5 possible to identify the person who supplied those data.

6 Q. So when you produce block-by-block CVAP data, for a block  
7 with one person, you're not going to produce data that reveals  
8 that person's response to the citizenship question, right?

9 A. We'll apply disclosure avoidance before tabulating that  
10 block, yes.

11 Q. So if a person exists in a block with one person on it,  
12 right where it says Lee, to the right, diagonally above it,  
13 that person says "I'm not a citizen" in response to the  
14 citizenship question, and you publish a total number of  
15 noncitizens for that block, can you publish one?

16 A. If they said they're not a citizen?

17 Q. Yes. Can you publish one for there's one noncitizen on  
18 this block?

19 A. So what we would do is we would add random noise to the  
20 tabulation, reconstruct the microdata and then publish the  
21 counts from the random noise. The random noise introduces  
22 substantial uncertainty about the single person and less and  
23 less uncertainty as the number of persons involved increases.

24 Q. And the reason why you do that, Dr. Abowd, is because if  
25 you didn't do it, publishing the CVAP data at the block level

IbdWnys7

Abowd - Direct

1 would create what you might call re-identification risks for  
2 that person, right?

3 A. Yes.

4 Q. And just so we're all clear, re-identification is when  
5 there's data that's anonymous but a third party can look at it  
6 and then manage to discover the individual to which that data  
7 belongs, right?

8 A. That's correct.

9 Q. And you apply data disclosure-avoidance techniques to  
10 prevent that from happening, right?

11 A. That's correct.

12 Q. And you don't just do that for census blocks that have a  
13 single person on them; you do that for every census block,  
14 right?

15 A. That's right.

16 Q. So, Dr. Abowd, there won't be a single census block in  
17 which the citizenship numbers, as reported by the census after  
18 the 2020 census questionnaire, reflect the actual responses  
19 reported by the people who live there in their responses to the  
20 citizenship question on the 2020 census, correct?

21 A. Except randomly, correct.

22 THE COURT: Can I just ask a few questions about how  
23 this works.

24 First of all, by way of background, how is it  
25 determined what a census block is? Why do some have zero



IbdWnys7

Abowd - Direct

1 people, some have one, some have hundreds?

2 THE WITNESS: So, your Honor, census blocks are used  
3 for two basic purposes. One purpose is to organize the work  
4 flow in collecting census, we generally call enumeration  
5 blocks. And the other is for producing summaries later on. We  
6 generally call them tabulation blocks. They're not exactly the  
7 same, but they're very similar.

8 A tabulation block is the lowest level of geography,  
9 smallest level of geography that we publish any data on, and we  
10 publish it so that users of those data can assemble arbitrary  
11 geographic areas, like school districts or voting districts,  
12 with enough granularity so that they can meet the purpose of  
13 making a school district or a voting district. And so the  
14 granularity in the block definitions is determined over the  
15 course of the decade by negotiation in many cases with  
16 bipartisan redistricting offices to determine that the,  
17 basically the pixel that you're going to build geographic units  
18 from is sufficiently small that you can get the geographic  
19 areas you're trying to draw accurate enough but not so small  
20 that we're simply releasing one -- the contents of each address  
21 in the MAF.

22 THE COURT: All right. Thank you. That's helpful.

23 And then could you just flesh out what the process  
24 involves of introducing random noise, what that means in  
25 practice. I don't know if it's helpful to use some of these

IbdWnys7

Abowd - Direct

1 census blocks by way of example, but how would you mask, in  
2 this Lee census block that has only one person in producing  
3 that data to the Justice Department or whomever, how would you  
4 mask that person's citizenship?

5 THE WITNESS: So, one of the things we're doing with  
6 the 2020 census is we are moving from what is called  
7 traditional statistical disclosure limitation to modern  
8 disclosure limitation processes that were invented by  
9 cryptographers, and the particular process that we're using is  
10 called differential privacy. That's a system where you -- you  
11 set up a mathematical guarantee about how much any user of the  
12 data can learn about an individual who contributes to those  
13 data, and that mathematical guarantee looks like, if I do the  
14 tabulation with your data in or out of the overall database,  
15 the statistics that I produce are only allowed to be different  
16 by an amount epsilon. So basically, your -- the statistics  
17 with or without your data are indistinguishable from the  
18 statistics, the statistics with your data are indistinguishable  
19 from the statistics without your data by an amount that  
20 controls the randomness that we add.

21 We have developed a lot of public materials on this,  
22 but we're not as practiced in talking about it as the  
23 historical methods that we use, as you might have noticed from  
24 the awkwardness of that answer, for which I apologize. So it  
25 basically says you make the tabulation from the real data, you

IbdWnys7

Abowd - Direct

1 add an amount of noise to each, in this case block, in the real  
2 data that's been calibrated so that I can make that promise to  
3 you that your data didn't affect this overall tabulation by any  
4 more than epsilon, and then you take the noisy data and  
5 re-create the microdata from the tabulated.

6 THE COURT: All right. Let me see if I can translate  
7 this into more plain English. Would there be any way, for  
8 example, to take the census block just above the E that has a  
9 one in it -- right, that's one person in that census block?

10 THE WITNESS: Yes.

11 THE COURT: I presume there would be no way to  
12 disclose the data for that particular person without, at the  
13 census block level in an accurate way that wouldn't reveal  
14 things that you're prohibited from revealing under Title 13, is  
15 that correct?

16 THE WITNESS: That's our interpretation of the law,  
17 yes, sir.

18 THE COURT: OK. So by introducing noise, I take it  
19 you need to go out to a broader geographic range, and in  
20 essence, you're sort of swapping people between the blocks?  
21 How does it work?

22 THE WITNESS: We're not -- excuse me, your Honor. I  
23 didn't mean to interrupt.

24 We're not swapping. We're basically replacing the  
25 real microdata with microdata that tabulate up accurately as

IbdWnys7

Abowd - Direct

1 the more -- as there are more and more people in the area that  
2 you're looking at, but in the block that had one person on it,  
3 basically every characteristic of that person has been infused  
4 with noise, so changed, if you like.

5 THE COURT: So swapped.

6 THE WITNESS: Well, swap implies that it came from  
7 someplace else. That's why --

8 THE COURT: But in other words, presumably any change  
9 up on one dimension or characteristic would have to be matched  
10 somewhere else by a change down.

11 THE WITNESS: The population totals are controlled to  
12 the national level, that's right. And so are the tabulations  
13 of the detailed variables, but even the national table has been  
14 protected except for the population total.

15 THE COURT: In other words, if someone, I don't know  
16 what this red box is, but if someone within this Lee area, the  
17 local jurisdiction wanted to get accurate citizen voting-age  
18 population for within that area, is that something that could  
19 be done consistent with the disclosure restrictions in Title  
20 13?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: And how would that be done?

23 THE WITNESS: Well, we actually had to work pretty  
24 hard to do it. We had to design the algorithm so that it could  
25 publish at the block level so you could build the arbitrary

IbdWnys7

Abowd - Direct

1 geographic areas that you needed, and the statistics kept  
2 getting more and more accurate as the number of people in that  
3 geographic area increased. So there are --

4 Perhaps Mr. Ho knows the total of the number of people  
5 in that red box, but looks like there's about 50 or 60. The  
6 data will be quite accurate for such advocacy. That's enough  
7 people so that the fact that we added noise to the individual  
8 data doesn't affect the tabulations very much.

9 THE COURT: How many people would you need for it to  
10 remain accurate but still allow you to mask in the way that  
11 you're required to do?

12 THE WITNESS: So, your Honor, that's not a question  
13 that can be answered in a vacuum. The way we are doing it is  
14 when you add the noise this way, you can produce a drawing that  
15 shows how the accuracy of various tabulations is affected by  
16 the amount of noise that you've infused, and it gives you the  
17 feasible levels. If you're going to protect the  
18 confidentiality, then you have to choose a point on this graph.

19 What we have to do is we have to decide, based on the  
20 use cases for the data, how to allocate that accuracy so that  
21 it meets the client use cases. So we're evaluating the way we  
22 will do this at the block level so that it would be useful for  
23 redistricting and for Section 2 scrutiny under the Voting  
24 Rights Act, and we have been given test cases from the  
25 Department of Justice in order to facilitate this evaluation so

IbdWnys7

Abowd - Direct

1 that we can show them that it's still fit for use.

2 We did not ever previously do this. Previously we  
3 just added the noise and told the users that we weren't going  
4 to tell them anything about it.

5 THE COURT: And maybe this is an unintelligible  
6 question, but is there a census block size that is adequate  
7 enough that you would not need to introduce noise in order for  
8 the relevant data to be masked?

9 THE WITNESS: No. You have to introduce noise, your  
10 Honor, to every block, to every tabulation, but you control the  
11 amount of noise that you introduce so as to guarantee accuracy  
12 along the dimensions that the use case requires.

13 THE COURT: All right.

14 Mr. Ho.

15 MR. HO: I may have some questions that might clarify  
16 some of this, your Honor.

17 Q. Dr. Abowd, with respect to what the Census Bureau's done in  
18 the past, the publicly available technical documents state that  
19 in the past the Census Bureau has applied household-level  
20 swapping and synthetic data noise infusion, correct?

21 A. That's correct.

22 Q. Let's talk about those two different things, and let's  
23 start with household-level swapping.

24 Household-level swapping would be where you take certain  
25 variables on one household's record and you match them up to

IbdWnys7

Abowd - Direct

1 the variables on another household's record, located in a  
2 different geographic area, and then you swap those values  
3 except the address so that it looks like essentially one  
4 household lives at one location and the other household lives  
5 in another location, right?

6 A. Yes, that's essentially correct.

7 Q. And when you do that, when you've done that in the past,  
8 you would swap the households across census blocks, correct?

9 A. Yes, sir.

10 Q. And you do that because there would be no point in swapping  
11 households within a census block, right?

12 A. That's right.

13 Q. Now, let's talk about synthetic data noise infusion.  
14 That's a different technique, right?

15 A. That is correct.

16 Q. And that's what you were talking about with Judge Furman  
17 earlier, right?

18 A. I was talking about a particular form of that, yes.

19 Q. Right, because there are multiple forms of synthetic data  
20 noise infusion, correct?

21 A. They're multiple forms of noise infusion. They don't all  
22 involve synthetic data.

23 Q. Thank you.

24 Now, one way of doing noise infusion is to develop a model  
25 for when you have a particular item or variable on a

IbdWnys7

Abowd - Direct

1 household's record that's sensitive and then replacing that  
2 variable as reported by the household with synthetic,  
3 essentially made-up data based on the model, is that right?

4 A. With a draw from the model's predictive distribution,  
5 that's correct.

6 Q. And the idea is that at a high level of geography, like a  
7 county, the overall aggregate numbers are going to remain  
8 essentially the same, right, Dr. Abowd?

9 A. So, some disclosure-avoidance methods have that property  
10 and some don't. Without getting into the deep weeds of ones  
11 that you're talking about, the particular synthetic data  
12 property that you just described won't have that feature unless  
13 it is engineered into the synthesizer.

14 Q. For the use case that you have here -- right -- when you're  
15 talking about higher levels of geographic units, like counties,  
16 when you infuse the synthetic data, the idea is that the  
17 aggregate numbers are going to be basically the same? Right?

18 A. The idea is not with respect to the geographic area but  
19 with respect to the population within the geographic area.

20 Q. Thank you.

21 A. The denser the population the more accurate the statistics.

22 Q. OK. So, the larger the population size of the geographic  
23 area the more accurate the data will remain even after  
24 synthetic data noise infusion, correct?

25 A. After the disclosure-avoidance procedure we're implementing



IbdWnys7

Abowd - Direct

1 for the 2020 census, that's correct.

2 Q. But at the smaller levels of geographic specificity, like  
3 the individual census block, the more noise there's going to  
4 be -- I mean, in terms of the population --

5 MR. HO: Let me start that question again.

6 Q. Areas with smaller population sizes -- like census blocks  
7 typically have smaller population sizes than counties --  
8 there's going to be more noise at that level of geographic  
9 specificity once you employ noise infusion, correct?

10 A. That's correct.

11 Q. So, leaving all the noise infusion and the CVAP data using  
12 responses to the citizenship question, today, when we use ACS  
13 CVAP data, generally speaking, we have more accuracy at  
14 geographic levels of specificity that have larger populations  
15 and more uncertainty at lower levels, correct?

16 A. That's correct.

17 Q. And that's also going to be true with CVAP data produced  
18 based on responses to the decennial census question due to  
19 noise infusion at higher levels of geography with more people,  
20 more accuracy but greater uncertainty at smaller levels of  
21 geography with smaller populations, correct?

22 A. It's the smaller populations that make the sentence  
23 correct, and yes, it is, with that qualification.

24 Q. Now, the Census Bureau has not yet set the parameters for  
25 disclosure avoidance for the CVAP table that will be created

IbdWnys7

Abowd - Direct

1 after the 2020 census, correct?

2 A. That's correct.

3 Q. If you do data disclosure avoidance properly, then the  
4 block-level CVAP data that you produce after the 2020 census  
5 including a citizenship question, the block-level data is going  
6 to be a series of estimates for each block rather than an exact  
7 tabulation of census responses, correct?

8 A. I have difficulty answering that question because  
9 "estimates" has a specific legal meaning that's not quite the  
10 same as the generally understood statistical meaning. The data  
11 produced for each block and for the entire country and for  
12 every geographic area in between will be based on the entire  
13 enumeration, so in that sense not an estimate.

14 In the sense that they have been infused with noise to  
15 protect confidentiality and therefore have margins of error  
16 that resemble the margins of error that you would get in  
17 statistical processes that become more accurate as the number  
18 of cases increases, then it is correct. So they are not  
19 estimates in the sense that the law understands sample-based  
20 estimates. They're based on the entire population.

21 Q. Well, let's not talk about the law for a moment. I just  
22 want to -- and let's not worry about sample-based estimates, or  
23 whatever.

24 Just in your words, Dr. Abowd, you would describe the  
25 block-level CVAP data that's produced even after a citizenship

IbdWnys7

Abowd - Direct

1 question is on the census as an estimate rather than a precise  
2 tabulation, correct?

3 A. Yes.

4 Q. So the block-level CVAP tabulation produced by the Census  
5 Bureau will not reflect the actual values of the number of  
6 citizens of voting age in each of those census blocks after the  
7 2020 census, correct?

8 A. It will not be exactly equal to that number. It will be  
9 approximately equal to that number, with the approximation  
10 improving as the population increases.

11 Q. And after the 2020 decennial census even if there is a  
12 citizenship question, when the Census Bureau produces  
13 block-level CVAP data, there will be error margins associated  
14 with that data, correct?

15 A. Yes.

16 Q. And after the 2020 decennial census, when the Census Bureau  
17 produces block-level CVAP data, even if there is a citizenship  
18 question on the census, as of right now, the Census Bureau  
19 doesn't know whether the margins of error associated with that  
20 block-level CVAP data will be larger or smaller than the CVAP  
21 data that DOJ currently uses, correct?

22 A. We don't know, but we are able to control the margin of  
23 error in different ways, and so we intend to produce those  
24 tables in a manner that is fit for use by the Department of  
25 Justice.

IbdWnys7

Abowd - Direct

1 Q. But you don't know right now whether or not the margins of  
2 error associated with block-level CVAP data produced after the  
3 2020 census, assuming that there's a citizenship question on  
4 it, that those block-level estimates will have margins of error  
5 that are any smaller than the block-level CVAP data that DOJ  
6 currently relies on, correct?

7 A. I'd like to answer your question, Mr. Ho, but the DOJ  
8 doesn't currently work with any block-level CVAP data, so --

9 Q. Well, the DOJ does translate ACS CVAP data at one level of  
10 geographic specificity and combines it with decennial census  
11 data to produce block-level CVAP estimates, correct?

12 A. That's not my understanding of how it's done. My  
13 understanding of how it's done is that they combine block-level  
14 CVAP data with block-level other data, PL 94 data, and they  
15 estimate the citizen population in the voting districts that  
16 they're trying to supply -- to do scrutiny of. Sometimes that  
17 involves having to model down to the block level, but it  
18 doesn't always.

19 Q. OK. Dr. Abowd, this is a very simple question. The CVAP  
20 data that the Census Bureau's going to produce after the 2020  
21 census, assuming that the 2020 census includes a citizenship  
22 question, we don't know today whether or not that data will  
23 have margins of error that are any more precise than the CVAP  
24 data on which the Department of Justice currently relies,  
25 correct?

IbdWnys7

Abowd - Direct

1 A. Because the parameters have not been set, the answer to  
2 that question has to be yes.

3 Q. Dr. Abowd, there were never any conversations between the  
4 Department of Justice and the Census Bureau about this issue  
5 prior to Secretary Ross's issuance of his decision memo  
6 ordering the inclusion of the citizenship question on the  
7 census, correct?

8 A. That's correct.

9 Q. DOJ refused to meet with you to discuss, right?

10 A. So, I don't know that DOJ would have refused to meet with  
11 us to discuss disclosure avoidance on the PL 94 and CVAP table.  
12 All I know is that they didn't meet with us to discuss the  
13 specific request about adding a citizenship question to the  
14 2020 census.

15 Q. During that whole process, between when you began your  
16 analysis with the SWAT team and when Secretary Ross issued his  
17 decision memo, there were never any conversations between  
18 commerce and the Census Bureau about how disclosure avoidance  
19 might affect the precision of the CVAP data that the Census  
20 Bureau could produce after the 2020 census, correct?

21 A. Not entirely. I had already briefed Undersecretary Kelley  
22 on the consequences of modernizing the disclosure-avoidance  
23 system at the Census Bureau. I briefed her, I believe, in  
24 November of 2017.

25 Q. That was before you began working on the citizenship

IbdWnys7

Abowd - Direct

1 question, right, Dr. Abowd?

2 A. That's correct.

3 Q. OK. My question was meant to be a little more precise, and  
4 I apologize if I didn't word it correctly. But my question is  
5 from the time that you started analyzing the citizenship  
6 question request from the Department of Justice to when  
7 Secretary Ross issued his decision memo, there were no  
8 conversations between the Census Bureau and commerce department  
9 officials about whether disclosure avoidance might affect the  
10 precision of the block-by-block CVAP data that the Census  
11 Bureau could produce based on responses to the citizenship  
12 question on the census, correct?

13 A. Not quite. We did, both in discussing it with the  
14 secretary and in discussing it with the undersecretary, remind  
15 them both that we would be using disclosure-avoidance  
16 procedures at the block level.

17 Q. And in spite of that reminder, the secretary forged ahead  
18 and ordered a citizenship question anyway, right, Dr. Abowd?

19 A. The secretary was aware of our intention to use disclosure  
20 avoidance --

21 Q. There are no documents in the administrative record that  
22 you're aware of, Dr. Abowd, that reflect the way in which  
23 disclosure avoidance might affect the precision of  
24 block-by-block CVAP data that the Department of Justice was  
25 requesting from the Census Bureau through a citizenship

IbdWnys7

Abowd - Direct

1 question on the census, correct?

2 A. That's correct.

3 MR. HO: Let's go back to Secretary Ross's memo,  
4 Plaintiffs' Exhibit 26. I want to go to page 8.

5 Q. Secretary Ross says that he has determined that  
6 reinstatement of a citizenship question on the 2020 decennial  
7 census is necessary to provide complete and accurate data in  
8 response to the DOJ request. Do you see that?

9 A. Yes, I do.

10 Q. Dr. Abowd, you don't agree that a citizenship question on  
11 the 2020 census is necessary to provide a complete and  
12 accurate, to provide complete and accurate data in response to  
13 the DOJ request, correct?

14 A. That's correct.

15 Q. And Dr. Abowd, the position of the Census Bureau is that a  
16 citizenship question on the 2020 decennial census is not  
17 necessary to provide complete and accurate data in response to  
18 the DOJ request, correct?

19 A. That's correct.

20 MR. HO: Dr. Abowd, I don't have any other questions  
21 for you right now, but your Honor, the plaintiffs, because we  
22 still have a few exhibit issues to sort out, although my  
23 questioning of Dr. Abowd is complete, we would not like to  
24 close the record just yet.

25 THE COURT: All right. I also assume you want to